REPUBLIC OF BOTSWANA

REPORT OF THE PRESIDENTIAL COMMISSION OF INQUIRY INTO SECTIONS 77, 78 AND 79 OF THE CONSTITUTION OF BOTSWANA

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Presidential Commission of
Inquiry into Sections 77, 78
And 79 of the Constitution
of Botswana
Private Bag 001
GABORONE

30 November, 2000

His Excellency Mr. F. G. Mogae
President of the Republic of Botswana
Private Bag 001
GABORONE

Your Excellency,

You appointed us on the 28th July, 2000 to inquire into Sections 77, 78 and 79 of the Constitution of Botswana. We immediately undertook an extensive tour of the country consulting Batswana. Although you had given us a time frame of three months within which to complete our task, we had to request for an extension of time, which we are grateful Your Excellency granted. The assignment was indeed a sensitive and involved one. We have now completed the assignment.

We have the honour, Your Excellency, to present to you for your consideration, our Report, which contains our Findings and Recommendations.

Yours sincerely,

.....

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(CHAIRMAN)

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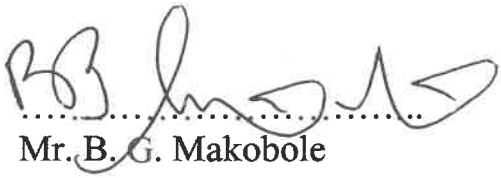

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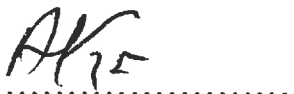

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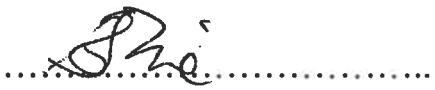

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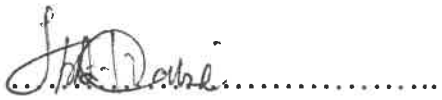

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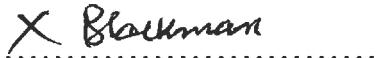

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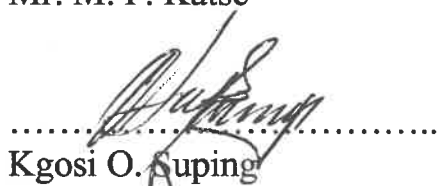

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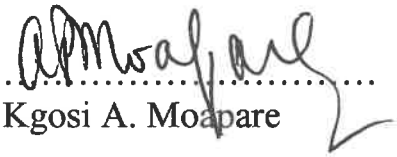

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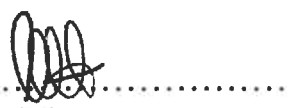

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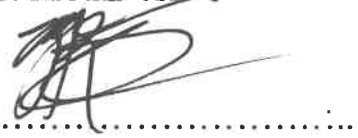

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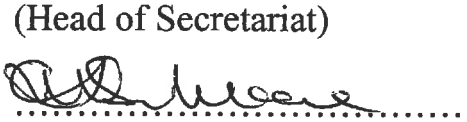

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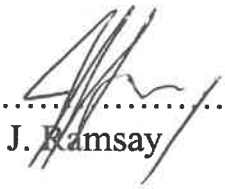

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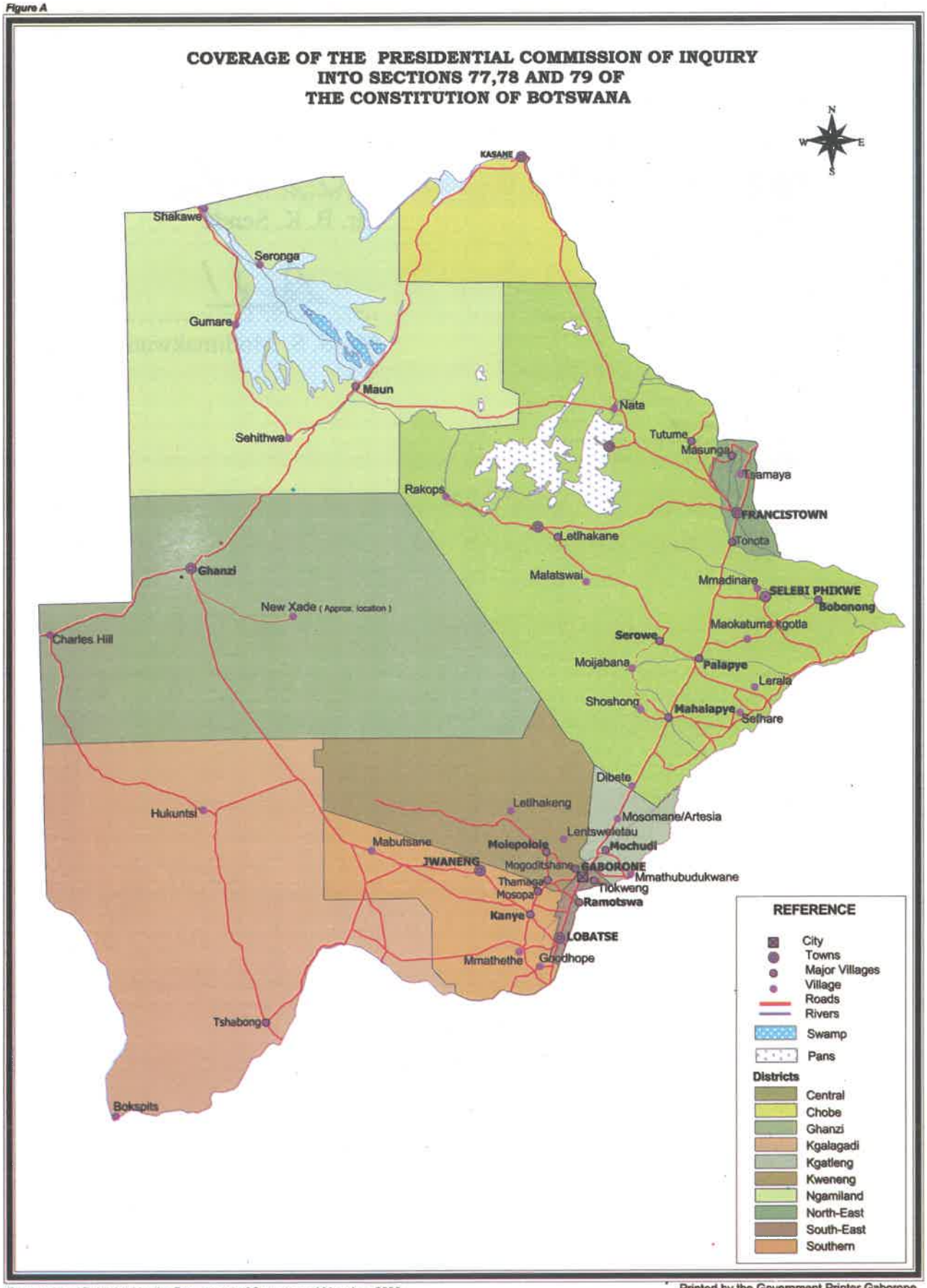
Figure A



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ACKNOWLEDGEMENTS

We would, first and foremost, like to thank His Excellency the President of the Republic of Botswana for the honour and trust he bestowed upon us by appointing us as Members of this Commission. It is our hope that this Report reflects the confidence your Excellency has reposed in us.

The Commission expresses its profound gratitude to all who went out of their way to attend the meetings and sittings we held around the country to consult and receive submissions on this matter of national importance. We thank those who prepared written submissions both through invitation and on their own initiatives. We also thank those who attended the *Kgotla* meetings and contributed their views to this important subject.

We wish to single out the following senior citizens who had participated in the framing of the Constitution, who happily answered our call to appear before us, and benefited us with their knowledge and experience. They include the former President His Excellency Sir Ketumile Masire, former Speaker of the National Assembly Mr. Moutlakgola Nwako, former Ambassador to United States of America Mr. Archibald Mogwe, President of the Independence Freedom Party Mr. Motsamai Mpho and President of the Customary Court of Appeal Kgosi Linchwe II.

Our gratitude also goes to the public officers at large, and in particular the District Commissioners and Council Secretaries, who were very instrumental in organising Kgotla meetings and ensuring that people from major centres and their environs attended and were adequately represented at the meetings. In no small measure, we thank the Department of Information and Broadcasting for the sterling work they did in publicising our meetings. We also extend our gratitude to the Botswana Defence Force, National Airways Corporation, and Kalahari Air Services, for transporting us, the various Hotels, Lodges and Centres who accommodated us in the course of our travels.

The Commission delegated some of the Members to undertake a study tour to the Republic of Zambia. We are thankful to the Government of the Republic of Zambia for receiving us and arranging meetings for us to share experiences with authorities from their various Ministries and departments, on matters relating to Chieftainship. We would like to make

a special mention of the Botswana Mission in the Republic of Zambia who assisted in making the arrangements for our visit.

Last but not least, our special thanks go to the Secretariat, headed by Mr. J. B. Gabaake, for the very effective way they conducted the activities and work of the Commission. We as well thank the support staff Ms Jaloni Shirley Timuno, Mrs. Sonyana Jane Mathware, Ms Baji Keakantse, Mr. Robert Mpofu and Mr. Patrick Moabiwa. We are grateful to them for doing their work selflessly and, on occasion, assisting beyond the call of duty.

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CHAPTER ONE

1. INTRODUCTION

1.1 Preamble

"The tradition of the Kgotla provides a strong base to build a decentralised democracy. Democracy must be extended down to the level of community in a way that allows ordinary people to see that their views have been freely sought and seriously received. There must be ownership and empowerment among the population if Botswana is to withstand the challenges of change."

Long Term Vision for Botswana: Towards Prosperity For All, Page 58.

1.2 Background

On February 17th 1995, Parliament adopted a Motion tabled by the Member of Parliament for Sebina – Gweta, the Honourable Mr. Oliphant Mfa. The Motion, adopted following an amendment, reads as follows:

> "That this House requests Government, in order to promote Nation Building, to amend Sections 77, 78 and 79 of the

Constitution in order to render them tribally neutral". (Hansard: Feb 1995:85)

The specific Sections in question, in so far as they concern us, are worded as follows:

"Section 77. (1) There shall be a House of Chiefs for Botswana.

(2) The House of Chiefs shall consist of -

(a) eight *ex-officio* Members:

(b) four Elected Members; and

(c) three Specially Elected Members.

"Section 78 The *ex-officio* Members of the House of Chiefs shall be such persons as are for the time being performing the functions of the office of Chief in respect of the Bakgatla, Bakwena, Bamalete, Bamangwato, Bangwaketse, Barolong, Batawana and Batlokwa Tribes, respectively.

"Section 79 (1) The Elected Members of the House of Chiefs shall be elected from among their own number by the persons for the time being performing the functions of the office of Sub-Chief in the Chobe, North East, Ghanzi and Kgalagadi districts, respectively.

(2) The Specially Elected Members of the House of Chiefs shall be elected by the *ex-officio* and Elected

> Members of the House of Chiefs in accordance with the provisions of this Constitution from among persons who are not and have not been within the preceding five years actively engaged in politics."

The Honourable Mr. Mfa's Motion was extensively debated in Parliament. Some Members discussed the historical reasons behind the three Sections, explaining that the framers of the Constitution could not have intended to entrench discrimination in the Constitution. They explained that the Constitution reflected the reality of the time and was acceptable then. We represent the quotations as they appear in Hansard. During this discussion, the Honourable Mr. Jacob Nkate noted, that:

> "A nation evolves, changes in character, size and in all sorts of ways, and as the nation changes, so must the Constitution because it has to define the inhabitants of the concerned republic. We all know that as a nation grows, it develops new characteristics, therefore, it is inevitable that we will begin to demand things which we did not demand previously."

The Honourable Nkate further said that "we may be having no discrimination in terms of opportunities offered to citizens, but if there is a loop hole in our Constitution, peoples' minds will never rest."

Echoing similar sentiments, the Honourable Mrs. Joy Phumaphi stated during the same debate, that:

"Nation building is a continuous process, it is not a process which started and ended with independence in 1966.... As caretakers of this nation building process, it is our responsibility to make sure that any laws or any premise upon which this nation is built when the Constitution is formed, also evolves with the people of this country. We have reached a stage in our development where it is ripe for tribes of this nation, to view each other as one.... when we say we are a nation, we mean we are uniform and uniformity requires uniform treatment. "

Supporting the Motion, the then Vice President, now His Excellency the President, Mr. Festus Mogae, stated that:

"A Constitution of a Republic is a living document because a Republic is a living institution and it is dynamic. What is right today may not be right tomorrow and what was right yesterday may not be right today. Great nations such as the United States has had cause to amend their constitution 27 times over the last 219 years precisely because circumstances change and when they change you need to accommodate them. It does not mean that the original Constitution was wrong, it means that as the Republic grows it evolves, new needs and new perceptions arise, and they have to be catered for."

The then Vice President went on further to state that:

> "But the point I am making is that, we agree that we should look at the constitution. I do not think that the constitution is discriminatory. It guarantees the equality of individuals. Sections 3 and 15 as you have been quoting does that. But as I say, it is certain perceptions, certain words that are now considered unacceptable by most people or by some sections of the community and we have to pay heed to that. It is just to say that if they are mere perceptions, then let us get rid of them, not because the constitution does not say that individuals are not equal. That is the spirit in which we support this motion."

The opposition Members of Parliament also supported the Motion, but took the view that discrimination was intended from the beginning.

The Honourable Mr Michael Dingake had this to say:

> "The important thing is that we want to make certain, that every Motswana, whatever his tribe, is accepted by other tribes in Botswana. That's what we want to achieve by this amendment. The mind is very important. If I believe I am being discriminated against, there is nothing you can do about it. You can tell me the Constitution says we are equal, but if I believe in my mind that there is discrimination, then as far as I am

adequately represented by people acceptable to them. Similarly those who acquired rights from the original constitution will obviously be closely watching the direction taken to safeguard their rights. My objective is to ensure that we cater for the needs of those who feel disadvantaged without creating new disadvantages or interfering with vested rights."

For the record, it should be noted that the Honourable Mr. Mfa's Motion on the three Sections was not the first to be tabled and debated in Parliament. On Friday 2nd December 1988, the then BNF Member of Parliament for Gaborone North, the Honourable Mr. Maitshwarelo Dabutha, tabled the following Motion;

> "That in accordance with the principles of democracy and equality this Honourable House urges Government to amend Sections 77, 78 and 79 of the Constitution of Botswana to recognise equality of all tribes of Botswana and their Chiefs". (Hansard: Dec. 02 1988:475).

Honourable Mr. Dabutha's Motion was rejected by Parliament after a full debate.

In addition to having been debated in Parliament and the House of Chiefs, Sections 77, 78 and 79 have been the subject of debate at various fora, including the Press, academic conferences and political rallies. For example, the 'Conference on Democracy in Botswana' held in 1988 at the Gaborone Sun, discussed among other topics, the

issue of minorities and cultural rights. The three Sections were debated. (See Holm and Molutsi, 1989).

During the national consultation exercise for drawing up the Long Term Vision for Botswana (Vision 2016), many members of the public raised concerns about the said Sections and advised that, if the Constitution was not amended, the long-term stability of this country, and in particular, the sustainability of its unity, could not be guaranteed.

1.3 Terms of Reference

In order to implement the 1995 Motion by Honourable Mr. Mfa, His Excellency the President Mr. Festus Mogae appointed a Commission of Inquiry into Sections 77, 78 and 79 of the Constitution. Notice of the appointment of the twenty-one member Commission was given on 28th July 2000. ***Government Gazette Extraordinary vol. xxxviii, no. 40 of 31st July, 2000 (attached as Appendix "A")***

The Terms of Reference for the Commission were Gazetted as follows:

> "a) to review sections 77, 78 and 79 of the Constitution of Botswana, and to seek a construction that would eliminate any interpretation that renders the sections discriminatory;

"(b) to review and propose the most effective method of selecting Members of the House of Chiefs; and

"(c) to propose and recommend measures to enhance the efficiency and effectiveness of the House of Chiefs."

1.4 Methodology and Limitations

In order to address the above Terms of Reference, the Commission embarked on a countrywide consultation process. Kgotla meetings were addressed in selected villages in all constituencies around the country (see Figure "1" and Appendix "B"). In the interest of achieving a balanced consultation with a wide coverage, the Commission initially decided that it would address at least one meeting in every constituency. Constituency centres were identified. Through the help of District Commissioners and other officials, people from adjacent villages were transported to the venues of meetings. Mass media was employed to further ensure that people were aware of the Commission's itinerary and purpose. These arrangements worked well, and meetings were well attended.

Owing to the fact that the Commission was initially allocated three months to complete its work, it was deemed necessary to begin work as quickly as possible. As a result, the Commission began its countrywide consultations in the south-eastern quarter of Botswana, while logistical arrangements were being made for its travel to other parts of the country.

Due to the overwhelming public interest in its work, the Commission received requests for the convening of additional meetings. Such requests were granted where possible. In deciding on which additional villages to visit, the Commission took into account such factors, amongst others, as distance from other population centres and diversity of population groups.

A major concern in some villages was that the time allocated was not enough. Although the Commission acknowledged that time was limited, it was nonetheless satisfied that, on the whole, ample opportunity had been provided in each case for a representative airing of views. In addition, the Chairman of the Commission invited interested parties to submit written submissions.

Apart from Kgotla meetings, the Commission also received written and oral submissions. This was encouraged through advertisements in the local media, and through the convening of a series of public sittings in Francistown and Gaborone. These two centres were chosen because of their status as the major population centres in the northern and southern parts of Botswana respectively.

In addition to the above, the youth were given the opportunity to air their views at their annual consultative conference held in Kanye. Youth leaders from all over the country participated at this forum. The Commission appreciated the assistance of the Botswana National Youth Council in availing this opportunity.

The response from the public in terms of attendance and participation at all of the fora, showed a high level of public interest in the Commission's work. People often travelled considerable distances to attend the meetings. Many brought written submissions from their communities. In all, the Commission convened 60 Kgotla meetings throughout the country and received more than 150 written individual and group submissions.

The written submissions that were received represented views from a broad cross-section of Botswana society. Included were the views of academics, lawyers, community activists, youth, *dikgosi* and other traditional leaders, non-governmental organisations, cultural groups, political parties, and other members of civil society, as well as the Vision Council.

In order to better appreciate the historical context of the Constitution, the Commission also sought the opinions of senior statesmen who had participated in its drafting. These individuals were: Sir Ketumile Masire, former President of the Republic, Mr. Moutlakgola Nwako, former Speaker of the National Assembly, Mr. Motsamai Mpho, President of the Botswana Alliance Movement and Kgosi Linchwe II of the Bakgatla, and President of the Customary Court of Appeal. Also consulted was Mr. Archibald Mogwe, a former Cabinet Member who, as a civil servant, had served as a facilitator during the Constitutional discussions. All of these figures appeared before the Commission in Gaborone, with the exception of Mr. Motsamai Mpho,

who we met while in Maun, and Kgosi Linchwe II, who we met in Mochudi and Artesia.

We had an all-day session with the House of Chiefs. All Members of the House were present at this gathering.

We also sought to examine alternative external models for the representation of Chiefs or traditional leaders. In the process, a fact-finding delegation, consisting of four Commissioners (including the Chairman) and a member of the Secreteriat, was sent to gain a deeper appreciation of ongoing developments in Zambia. There was not, unfortunately, sufficient time to allow for visits to other countries.

Additional research on the domestic and international legal implications of the Sections under review was undertaken. External constitutional and administrative models on the role of traditional leadership in modern state structures, and matters of historical context, were also examined.

1.5 The Commission's Approach to Public Consultations

The Commission followed a standard procedure in its public meetings. After formal greetings, the Chairman of the Commission began the substantive business of each consultation by giving a standard overview of the Commission's mandate. In this, he included the background to the Commission's appointment, read out its Terms of Reference, and the three Sections in question. The Terms and

Sections were fully translated and explained. It was decided that only the Chairman should introduce the proceedings so as to ensure consistency in approach and style.

Each meeting was reminded that the issue was a sensitive one, and it had to be handled with the maturity and sensitivity it deserved. The Chairman then invited the public to feel free in making their submissions. In this respect, the public was informed that the Commission had come to listen to their views, and would not draw any immediate conclusions.

Thereafter, the audience was encouraged to speak freely in the language of their choice. While most of the deliberations took place in Setswana, on occasion Ikalanga, Tjiherero, Afrikaans, and Khoisan dialects were used, as well as English. At the end of every consultation, the public was reminded of the availability of the option of sending written submissions to the Commission. The public was informed that they could also obtain the address and other contact details of the Commission from their respective District Commissioners' offices.

At the beginning of its proceedings, the Commission decided that it was necessary for the entire body to travel together for each public consultation. This was seen as necessary, in light of the sensitivity of its task, to ensure that all members of the Commission were collectively exposed to the same range of viewpoints.

We received a wide range of comprehensive and informative submissions. These were found to be of great help. Some, however, focused on issues that fell outside the Commission's Terms of Reference and consequently outside the scope of our work.

1.6 Structure of the Report

The first Term of Reference charging the Commission requires that we review the three Sections and seek a construction that would eliminate any interpretation that renders the Sections discriminatory. As the next two Chapters indicate, members of the public were divided on whether the three sections are discriminatory. We have summarised these opposing viewpoints in Chapters Two and Three respectively.

Chapter Four summarises the public's views on what they consider to be the most effective method of selecting Members of the House of Chiefs, while Chapter Five presents their views on how the House can be made more effective and efficient.

Chapter Six provides an overview of traditional leadership structures in selected countries. In particular, it focuses on the manner in which the issue of traditional leadership is being accommodated in the democratic systems of Ghana, Zambia and South Africa.

Chapter 7 provides the background to the Findings and Recommendations Chapter. It discusses the issue of discrimination

and sets out the Commission's position on this issue. This Chapter also outlines the principles that guided the Commission in deciding on its Recommendations.

Chapter Eight provides the Commission's Findings and Recommendations, while Chapter 9 presents alternative models for the possible composition of the House of Chiefs. Chapter 10 outlines the principles for the possible drafting of amendments to the Constitution. Finally, the Report concludes with Appendices.

CHAPTER TWO

2. VIEWS RECEIVED FROM THE PUBLIC TO THE EFFECT THAT SECTIONS 77, 78, AND 79 OF THE CONSTITUTION ARE NOT DISCRIMINATORY.

2.1 Introduction

The Commission was tasked with reviewing Sections 77, 78, and 79 of the Constitution of Botswana and to seek a construction that would eliminate any interpretation that renders the Sections discriminatory. During the course of its deliberations, the Commission found that public opinion was divided on this critical issue. Arguments on whether the said Sections are discriminatory fell into the following broad categories:

a) principles of governance;
b) ethical and religious view points;
c) conflicting historical views; and
d) legal opinion.

This Chapter summarises the views of those who said that the Sections are not discriminatory, while the next Chapter records the views of those who said that they were.

of defined Tribal Territories, or the four Elected Members who represent Tribal Communities residing in those Districts.

Some of those who argue that the Constitution is thus not discriminatory, nonetheless, acknowledged that there was unhappiness in certain quarters with the existing form of representation.

Among most defenders of the status quo there was also a strong feeling that the historical context from which the current dispensation has emerged ought to be respected rather than denigrated as it has been central to past nation building. In this respect, it was stated that relevant Acts draw a clear distinction between what is legally defined as a "Tribe" and "Tribal Community". They, therefore, felt that the prominence of the eight should be maintained.

Defenders of the status quo frequently made the point that the existing Constitution has served this country well since independence. In this respect, they talked about the peace and stability Botswana has enjoyed, which is widely acknowledged by the international community. Some contrasted Botswana's record of human rights and democracy with examples of conflict and repression elsewhere, warning that it would be wrong to tamper with something that has earned the country accolades as "a shining example of democracy". They expressed concern that there could be chaos, confusion and a breakdown of national unity and consensus if the Constitution was unduly tampered with.

Those arguing that the Sections are not discriminatory often noted that the eight tribes listed in Section 78 are historical legacies. They often placed their arguments in the context of interpretations of both pre-colonial and colonial developments.

In the pre-colonial context, it was noted that the *merafe* in question existed prior to the establishment of the Bechuanaland Protectorate. It was maintained that the British did not create the Tribal Territories, but rather acknowledged their pre-existence. As Territorial Chiefs, they were merely integrated into the colonial administrative system of indirect rule. Their *ex-officio* status is thus rooted in the pre-colonial past.

Some defenders of Section 78 also asserted that the House of Chiefs should be perceived as a symbol of nation building. They maintained that it was designed to give the new post-colonial government legitimacy. They also emphasised that Botswana was built on the basis of the voluntary accession of the Tribal Territories of the eight listed Tribes. Any of the eight, it was said, could have opted out of the Republic of Botswana if they so wished, giving rise to turmoil. This, it was said, could still happen. It was further pointed out that some of the eight listed Tribes agreed to voluntarily cede their mineral rights for the common good of the nation. Rather than denigrate the eight listed tribes, it was observed that people should be grateful for the sacrifices they had made for democracy and the greater benefit of the nation.

2.3 Justifications of the status quo based on interpretations of the evolution of merafe.

Many argued that the Dikgosi-kgolo ('paramount Chiefs') of the past were the leaders of multi-ethnic coalitions who defended the territory of modern Botswana from such nineteenth century invaders as the Amandebele, Bakololo, and the Boers. During the process of these struggles, many groups were given protection by various Dikgosi-kgolo. They were allocated land and otherwise accorded political rights within the *merafe* of the Dikgosi-kgolo. In the process larger, more prosperous polities emerged, and these can be seen as the foundation stones of modern Botswana. In this context, some groups were incorporated into the larger *merafe* as refugees (*batshabi/bahaladi)*, while others simply affiliated themselves as junior allies of the larger *merafe*. In the process, their chiefs accepted subordinate status as expressed in the traditional Setswana saying- "*tlou fa e tlotse molapo e tswa tlotswana*" (once an elephant crosses a river it becomes a junior elephant). In this saying, the crossing of a river is metaphorical for entering the territory of another chief, thus automatically foregoing one's original status of paramountcy.

Some defenders of the status quo also stated that *merafe* had expanded in the past through the conquest of other groups. It was said that this is something that can be found throughout world history. In this respect, they said that it made little sense to try to undo the past, cautioning that any attempt to do so could destabilise the country. On occasion,

speakers became emotional, and even spirited, in the face of what they perceived to be an implicit attempt to denigrate the nation's past.

It was observed that Batswana *merafe* have long been integrative by nature, which is evidenced by the many totems or *direto* found within each of them. The Commission was further informed that traditionally, *merafe* have been constituted from many *dikgotla*. For example, Tlokweng, the smallest and most homogeneous of the eight Tribal Territories, is historically made up of *dikgotla* or wards identified with such diverse totems as *tshwene, kwena, nare, tlou, phuti, tau, kgabo, noko, kgomo, kubu, phofu, tshipi, mmutla, and pelo*, as well as *thakadu* (see I. Schapera *Ethnic Composition of Tswana Tribes*, London School of Economics, 1952). All of the above have lived and continue to live together peacefully as one *morafe.*

2.4 Tribal Territories in the colonial context

It was pointed out that, from 1885, the *merafe* of Botswana came under British rule as part of the Bechuanaland Protectorate. As a result, the territories of the Dikgosi-kgolo were incorporated into the Protectorate as Tribal Reserves or Territories. The boundaries of these reserves (with the exception of the Barolong Farms) were ultimately defined by the Tribal Territories Act of 1933, which still has legal standing. The boundaries of the Barolong Farms are defined in the Botswana Boundaries Act, [Cap. 03.01].

In the context of the Tribal Territories Act of 1933, as well as broader historical evolution, the Tribal Territories of the eight Tribes whose Chiefs are accorded *ex-officio* status in Section 78 can still be regarded as the communally-held property of the eight respectively. Some have, therefore, argued that those constitutional provisions and other legal instruments protecting property can be applied to the Tribal Territories. Some members of the House of Chiefs were also of the opinion that the Tribal Territories Act is protected by Section 15(9)(a) of the Constitution. On the basis of the above, often associated with the doctrine of acquired rights, it was argued that such rights can not be tampered with without the consent of the eight.

Many also argued that the existing Tribal Territories' boundaries of Botswana should be maintained. In this respect, some drew an analogy between Botswana's internal boundaries and the Organisation of African Unity's principle of upholding colonial boundaries between member states. To undo this now could lead to chaos as it would open a Pandora's Box of conflicting historical land claims, thus undermining national unity and peace. The Commission was further reminded that Botswana has developed peacefully over the past thirty-four years by looking forward rather than backward. It was stated that, in the process, the country had avoided the terrible tribal conflicts that had afflicted many other states in Africa and, indeed, elsewhere.

2.5 Legal Justifications of the Three Sections

Some drew the Commission's attention to other Sections of the Botswana Constitution. Section 3 specifically protects the fundamental rights and freedoms of the individual. It states that:

> "Whereas every person in Botswana is entitled to the fundamental rights and freedoms of the individual, that is to say, the right, whatever his race, place of origin, political opinions, colour, creed, or sex, but subject to respect for the rights and freedoms of others, and for the public interest to each and all of the following, namely:
>
> (a) life, liberty, security of the person and the protection of the law;
> (b) freedom of conscience, of expression and of assembly and association; and
> (c) protection for the privacy of his home and other property, and from deprivation of property without compensation…"

Section 15 of the Constitution protects all people from discrimination. In particular, Section 15(3) states: "In this section, the expression 'discriminatory' means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, tribe, place of origin, political opinion, colour, or creed whereby persons of one such description are subjected to disabilities

or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description."

It was also observed that the rights that are upheld in the above provisions are reflected in daily practice within Botswana. Examples were cited to show that all citizens are accorded equal rights under the law, while society has made a further substantial commitment towards providing equal opportunities. In this respect, speakers often made reference to the following:

a) the ethnic diversity of national leadership,
a) Botswana's exemplary record of human development,
b) the existence of equality before the law, and
c) examples of affirmative action initiatives, such as the Remote Area Dwellers (RAD) Programme and the country's rural development policy bias.

2.6 Legitimacy of the Constitution

A variety of speakers spoke on the issue of the Constitution's legitimacy. They rejected arguments that Constitutional negotiations excluded some tribes. Among those who were participants at the framing of the Constitution in Lobatse in 1963, the former President His Excellency Sir Ketumile Masire, the former Speaker, Mr. Moutlakgola Nwako, and Kgosi Linchwe II, were all of the opinion that the forum was representative of the nation's stakeholders. They

reminded the Commission that all of the then existing political parties, as well as Chiefs and other representatives, were present. They said, in fact, there was ethnic diversity within this group (see appendix "C" for a list of those then present).

They further observed that there was no opposition to Sections 77, 78, or 79 at the time. While they acknowledged that Mr. Phillip Matante subsequently walked out of the independence talks held at Malborough House in London, they said it was not on the issue of tribal representation. Sir Ketumile Masire further observed that:

> "Sir Seretse Khama was passionately anti-discrimination and could not have conceivably allowed any discriminatory provisions in the constitution. He was, as a matter of fact, not particularly in favour of chieftainship because he considered it divisive. To him talking of republicans as junior or senior tribes would have been an anathema. To him it was equally inconceivable that a republican citizen could be said to be a subject of any other person be he a chief or whatever."

Defenders of the status quo pointed out that the Constitution already provides for other forms of representation, in addition to that of the House of Chiefs. It was further said that the representation that exists in the House is thus complemented by the popular representation in the National Assembly, which some described as a true House of Representatives, but also through such other representative organs as Town and District Councils, Land Boards, and Village Development

Committees. It was emphasised that the House should remain as the preserve of hereditary Chiefs and not be diluted by including non-royals. As Kgosi Linchwe II put it at a kgotla meeting in Artesia: The House should remain *"tshenene ya dikgosi"* (for pure royals).

CHAPTER THREE

3. VIEWS RECEIVED FROM THE PUBLIC TO THE EFFECT THAT SECTIONS 77, 78, AND 79 OF THE CONSTITUTION ARE DISCRIMINATORY.

3.1 Introduction

Those who contended that the Sections in question are discriminatory advanced a number of reasons for their views. These views generally fell under the following categories: historical, legal, political, moral and religious, and the need to realise Vision 2016. Almost all argued that the listing of eight specific tribes in Section 78 is discriminatory as most ethnic groups are left out. In this respect, many defined 'tribe' in non-territorial terms but rather in terms of such attributes as a distinct ethnic identity, shared culture, historical identity, and/or common language.

3.2 The Practice of Listing some Tribes is Discriminatory

Among those who said the Sections were discriminatory, there was a common conviction that the listing of the eight Tribes in Section 78, to the exclusion of other tribes, was inherently discriminatory. Many observed that Botswana is made up of dozens of clearly defined ethnic groups with distinct cultural traditions and historic identities. Many also voiced their suspicion over the coincidence that all of the eight listed Tribes are Setswana speaking. The criterion for selecting the eight listed Tribes was repeatedly questioned. Many noted that they

found the list illogical, given the fact that some of the unlisted tribes had greater populations, and clearly defined chiefs or other forms of traditional leadership.

To some, the coincidence referred to above was seen as a continuation of a historical pattern in which non-Setswana speaking communities are dominated and marginalized through a process of assimilation. As Dr. Lydia Nyati-Ramahobo states in an article submitted to the Commission:

> "At independence, the Government of Botswana adopted an assimilatory model into Tswanadom. It is generally understood that assimilatory models may in some instances amount to discrimination and it may nurture group interests at the expense of national interests, while others may deny citizen of the individual freedoms." (***Ethnic Identity and Nationhood in Botswana***, Paper presented at the International Conference on 'Challenging Minorities, Difference and Tribal Citizenship', Gaborone, May 2000.)

It was further observed that, although the Constitution does not specifically refer to major and minor tribes, or *meratshwana*, such classifications are nonetheless implicit in both the list itself and the way that the said listing legitimises other Acts such as the Tribal Territories Act, Chieftainship Act, and the Tribal Land Act. In this connection, many others indeed believed that such language is to be found in the Constitution, and were reluctant to alter their perceptions

notwithstanding the fact that the Commission's Chairman read out the text of Sections 77, 78, and 79 before each gathering.

In many cases, it was observed that the listing of the eight Tribes also serves to legitimise perceptions of their superiority within the wider community as reflected in such activities as school teaching and media discourse. Some gave examples of how the seeming superiority of the eight had been emphasised in primary school through drills reciting the eight major Tribes of Botswana. It was claimed that, besides distorting the historical composition of the country, this has had the effect of eroding the self-esteem of children belonging to the unlisted tribes.

The Commission was further confronted with claims of additional alleged discriminatory consequences of listing only eight Tribes in Section 78. These included the following:

a) The recognition of only eight Setswana speaking tribes for the purpose of membership of the House serves to marginalise the languages and cultures of non-Setswana speakers. People further complained about the Constitution's recognition of Setswana alone as a national language.

b) The cultures of the unlisted tribes or ethnic communities have been eroded, as the recognised Chiefs have not represented them. In this respect, many expressed the opinion that the

House of Chiefs should be playing a leading role in the preservation and promotion of all of Botswana's cultures.

c) The non-representation of the unlisted tribes or ethnic communities was further aggravated by the alleged failure by some of the *ex-officio* members of the House of Chiefs to consult with, and account to them, notwithstanding their claims to be their representatives. As a result of this alleged lack of consultation, there was a common complaint that the role of the House of Chiefs was generally unknown.

d) The listing of some tribes to the exclusion of others contributed to unequal development. Since in most cases the District headquarters coincided with the tribal capitals of the eight listed Tribes, there was a perception in some communities that developments also tended to be concentrated in these capitals.

e) A related observation was that the concentration of power and resources in the District Headquarters had led to administrative inefficiency that had retarded the development of Sub-Districts. This was accompanied by calls for greater decentralisation, more especially in the larger Districts.

3.3 The Historical Context for arguing that Sections 77, 78, and 79 are discriminatory

Those arguing that Sections 77, 78, and 79 are discriminatory perceived that the special status accorded the eight listed Tribes in Section 78 is rooted in colonial criteria at variance with Botswana's current status as a sovereign republic. They often noted that the Tribal Territories Act of 1933, itself rooted in earlier proclamations beginning with Proclamation 9 of 1899, was a legacy of the colonial policy of indirect rule, and hence was an anachronism in a post-colonial republic.

Some rejected notions that their communities had willingly accepted subordinate status in the past. In many cases, historical arguments were put forward to affirm particular communities' past rejection of the hegemony of the colonially recognised Territorial Chiefs. Examples of resistance were cited from both the colonial and pre-colonial periods. Some further argued that the rejection of "white colonialism" should be accompanied by a parallel rejection of "black colonialism." It was further alleged that some of the colonially recognised Chiefs had manipulated representation in the Native (later African) Advisory Council, which was the historic precursor of the current House of Chiefs.

Many also stressed that it is a misconception to say that their forefathers came to Botswana as refugees. Examples of residence preceding that of the eight listed Tribes were often cited. Some went

even further to state that they had never been subjugated by any of the eight Territorial Chiefs, while others acknowledged past subjugation but maintained that their subordinate status was a product of colonial policy rather than indigenous history.

Still others acknowledged past subjugation in the context of *botlhanka* and *bolata*. They noted that indigenous institutions of subservience are illegitimate in the modern context and even irrelevant as the Constitution should be framed so as to clearly protect the rights of all citizens irrespective of their heritage. In this respect, it was observed that while it was true in some cases that communities had either arrived as refugees seeking protection or had been conquered, this should not be used to justify their continued subjugation, especially where they had maintained distinct identities. Some drew an analogy to the acceptance of the British Protectorate by the Chiefs of the eight listed Tribes. They wondered whether any one could suggest that those who the British had protected in the past should still be British subjects today?

3.4 The Illegitimacy of the Constitution

A few rejected the legitimacy of the Constitution, alleging that the 1963 and 1966 constitutional consultations excluded critical stakeholders from the unrecognised communities. Many more, while not wishing to directly challenge the legitimacy of the Constitution, found fault with the process of its drafting. Some further alleged that

this was the reason why Mr. P.G. Matante had walked out of the 1966 independence talks at Marlborough House in London.

Besides the alleged exclusion of critical stakeholders, some further maintained that the Constitution was a product of colonial era manipulation. In this respect, the President of the Botswana Alliance Movement, Mr. Motsamai Mpho, who was a participant in the 1963 Lobatse Constitutional Consultations as the leader of one of the then factions of the Bechuanaland People's Party, affirmed in his submission that he often found himself locked out of critical behind-the-scenes discussions between the colonial government, white settler representatives and members of the Bechuanaland Democratic Party. He further stated that:

> "Whatever anybody else said did not matter, at least that is how I felt. I was asked to submit a minority view. But, experience elsewhere indicated that, such a move would delay the birth of our independence. And so Sections 77, 78 and 79 of the Constitution were written as you see them today. Little did I know that it would take this long to get them reviewed. There was no desire or effort to consult the various peoples in the regions to make an input in the discussion, except for the Asian community, which was represented by Abdul Rahim Chand. Even the three Chiefs who participated in the talks (Bathoen II, Mokgosi III, and Linchwe II) did not have formal consultative meetings with their people. This constitution has never been subjected to any debate. It was handed over to the people in its

present form. Since then, all non-Tswana speaking groups have never been happy, they have spoken, but nobody was willing to listen until [President] Mogae."

Others shared Mr. Mpho's view that, at the time of the Constitution's drafting, the views of various minority communities would not have been listened to. For these reasons, there was a widespread sentiment among critics that the time has come to have our own post-colonial Constitution.

3.5 Moral and religious criticisms of the Sections

Critics of the status quo also frequently cited moral and religious objections to Sections 77, 78, and 79. A number of Bible passages were cited in this respect to support the general principle that all people are God's children and thus created equal. To some, the perceived discriminatory nature of the said Sections thus violate Christian values. Some even went so far as to describe the Sections as sinful, while others simply spoke of the Sections as being against common morality.

Still others made reference to the traditional Setswana moral concept of "*Botho*" to assert that the Sections are immoral. *Botho*, as defined in the Vision 2016 document (page 2), refers to "one of the tenets of African culture- the concept of a person who has a well rounded character, who is well-mannered, courteous and disciplined, and

realises his or her full potential both as an individual and as a part of the community to which he or she belongs."

The document goes on to further define *Botho* as "a process for earning respect by first giving it, and to gain empowerment by empowering others. It encourages people to applaud rather than resent those who succeed. It disapproves of anti-social, disgraceful, inhuman and criminal behaviour, and encourages social justice for all."

3.6 Legal criticisms of the Sections

The Commission also encountered legal arguments to the effect that Sections 77,78, and 79 are discriminatory. These arguments were rooted in the analysis of both domestic and international legal instruments. Those focusing on the interpretation of domestic law made the following points, that:

a) A fundamental principle of the Constitution of Botswana is that all people are equal before the law. Any efforts to deny the right to be represented by a chief or traditional leader from their own tribe or community is a violation of this fundamental principle of equality before the law. Section 3 of the Constitution was commonly cited in this respect:

> "Whereas every person in Botswana is entitled to the fundamental rights and freedoms of the individual, that is to say, the right, whatever his race, place of origin, political

opinions, colour, creed, or sex, but subject to respect for the freedoms of others…"

b) Section 15 of the Constitution outlaws discrimination. In particular, the attention of the Commission was drawn to Section 15(3), which specifically outlaws discrimination based on "race, tribe, place of origin, political opinions, colour or creed."

c) The definition of "tribe" and "tribesman" in various Acts, e.g. the Chieftainship Act, the Customary Courts Act and the Administration of Estates Act, is different. In this regard, the meaning of "tribe" in the Tribal Territories Act and Chieftainship Act is consistent with the tribes listed in Section 78 of the Constitution and therefore exclusive and discriminatory of other tribes.

d) In light of the above, one could reasonably conclude that the rights of members of tribes not listed in Section 78 are compromised under the Constitution, contrary to Section 15(3) that disallows discrimination based on "tribe".

e) Many rejected the notion that the said Sections could not be removed from the Constitution. A few cited the former Attorney-General (later Chief Justice) Moleleki Mokama's 1988 presentation at the 'Democracy in Botswana Symposium', Gaborone 1987, at which he stated:

> "In 1966, when the Constitution was drafted, the founding fathers sought to frame a government structure which conformed to the political realities at the time. Sections 77, 78, and 79 reflect their judgement with respect to their picture of the critical divisions of the country at that time. If it causes anybody offence today, it certainly did not then. A constitution must be flexible and adaptable. If the majority view is that these sections should be amended, it is certainly within the power of Parliament to do so and to reconstitute the House of Chiefs in any shape that may be acceptable to the majority of the people."

Those focusing on international legal instruments in their criticism of Sections 77, 78, and 79, referred to the following;

a) ***The Universal Declaration of Human Rights*** adopted by the General Assembly of the United Nations on 10 December 1948.

Article 2 of the ***Declaration*** states that:

> "Everyone is entitled to all the rights and freedoms set forth in [the] Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

Article 7 of the same ***Declaration*** states:

> "All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this ***Declaration*** and against any incitement to such discrimination.

b) ***The International Covenant on Civil and Political Rights***

Article 26 of the ***Covenant*** states:

> "All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination, and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

Article 27 of the same ***Covenant*** states that:

> "In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language."

c) ***The International Convention on the Elimination of all Forms of Racial Discrimination,*** which condemns all forms of discrimination. In the preamble it reaffirms that:

> "...discrimination between human beings on the grounds of race, colour or ethnic origin is an obstacle to friendly and peaceful relations among nations and is capable of disturbing peace and security among peoples and the harmony of persons living side by side even within one and the same state."

Article 1 of the same ***Convention*** states:

> "Racial discrimination shall mean any distinction, exclusion, restriction or preference based on race, colour, descent or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise on an equal footing of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life."

Article 2(1)(c) of the ***Convention*** further states that:

"Each State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists;" while

Article 2(1)(d) of the ***Convention*** states: "Each State Party shall prohibit and bring to an end, by appropriate means, including legislation as required by circumstances, racial discrimination by any person, group or organisation;"

d) ***The Declaration on Race and Racial Prejudice*** adopted by the United Nations Educational, Scientific and Cultural Organisation (UNESCO), 27 November 1978. Article 2 (1) of the ***Declaration*** states:

> "Any theory which involves the claim that racial or ethnic groups are inherently superior or inferior, thus implying that some would be entitled to dominate or eliminate others, presumed to be inferior, or which bases value judgements on racial differentiation, has no scientific foundation and is contrary to the moral and ethical principles of humanity."

Article 6 (1) of the ***Declaration*** states that:

> "The State has prime responsibility for ensuring human rights and fundamental freedoms on an entirely equal footing in dignity and rights for all individuals and all groups."

Article 7 of the ***Declaration*** states that:

> "In addition to political, economic and social measures, law is one of the principal means of ensuring equality in dignity and

rights among individuals, and of curbing any propaganda, any form of organisation or any practice which is based on ideas or theories referring to the alleged superiority of racial or ethnic groups or which seeks to justify or encourage racial hatred or discrimination in any form."

e) ***The African Charter on Human and People's Rights***

Article 2 of the ***Charter*** states:

"Every individual shall be entitled to the enjoyment of the rights and freedoms recognised and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or status."

Article 19 of the ***Charter*** states:

"All peoples shall be equal; they shall enjoy the same respect and shall have the same rights. Nothing shall justify the domination of a people by another.

f) Article 4(c) of the ***Declaration and Treaty of the Southern African Development Community*** (Windhoek Declaration) of 17 August 1992, which calls on member states to act in accordance with the principles of "human rights, democracy, and the rule of law."

g) They also drew the Commission's attention to various international instruments calling for gender equality such as the SADC Gender Declaration by Heads of State or Government of 8th September 1992, and the Beijing Declaration, adopted by the 4th World Conference on Women on the 15th September 1995.

3.7 Arguments against the Sections based on politics and governance

Many critics of Sections 77, 78, and 79 emphasised the fact that Botswana is a sovereign Republic, and not a collection of monarchies. The Commission was repeatedly reminded that being a Republic means that all citizens are equal irrespective of their status at birth. Many went further to note that as a democracy, Botswana's Constitution should recognise the right of all citizens to select their representatives. The National Anthem, '***Fatshe leno la rona***', was sometimes invoked to affirm that all citizens of Botswana were equal. This was taken to include the right of groups to have self-determination in affirming their traditional leadership structures and identities. Moreover, the law should give equal recognition to the structures of traditional leadership among all groups.

It was often further asserted that retaining Chieftainship in its traditional and/or colonially sanctioned form is inconsistent with Botswana's commitment to democratic principles and values. Some went so far as to describe the House of Chiefs as an anachronism that should be abolished. In this regard, many believed that the Sections

were also in violation of the four national principles: Democracy, Development, Self-Reliance, and Unity, as well as the concept of *Botho* (above).

It was noted that Botswana's status as a sovereign Republic is enshrined in Section 1 of the Constitution. Within a democratic republican political order, there is no place for institutions that exclude some on the basis of their ethnic identity or social origin. In addition, it was argued that as a public institution, the House of Chiefs is sustained through the taxes of all citizens and as such should be fully representative.

Many emphasised the fact that Botswana is constituted as a unitary state, not a tribal federation. It was further noted that the listing of the eight based on their past status as territorial chiefs has been rendered irrelevant by subsequent legislation, most particularly the Tribal Land Act, which removed the power of Chiefs to allocate or otherwise serve as the custodians of land. Therefore, they are no longer territorial chiefs. Indeed today Chiefs, like all other citizens, must themselves apply to Land Boards to be allocated land. This has been the case since the enactment of the Tribal Land Act of 1971, which was amended in 1993 to replace "tribesman" with "citizen".

Those who criticised land claims based on the Tribal Territories Act often reminded the Commission of the title and content of the national anthem ***'Fatshe leno la rona,'*** in asserting that with independence the

land had become the property of the nation as a whole, rather than specific tribes.

Some wondered why some citizens should be represented in the House of Chiefs based on tribe, through *ex-officio* membership, while others are represented as Districts, through Elected Members. The Commission was further informed that there existed a contrast in conditions of service between the *ex-officio* and Elected Members. It was pointed out that unlike the *ex-officio* Members, the Elected Members automatically forfeit their benefits as members of the House upon the dissolution of Parliament. These arguments were put forward as evidence that the Constitution did not accord the same status to all tribes or ethnic communities.

In arguing the above, some people voiced their criticism of the notion of building a homogenous nation through processes of ethno-linguistic assimilation. In this respect, Botswana's Constitution was often contrasted with those of other countries, especially South Africa, which extend group rights to the various ethnic communities residing within their borders. While some acknowledged that it might have been reasonable to emphasise national integration at the time of independence, they were of the view that it is no longer advisable to ignore ethnic diversity in nation building.

3.8 Arguments against the Sections citing Vision 2016

Many people referred the Commission to passages of the sections in the Vision 2016 document, which recognise the need for Unity in Diversity. Specific reference was made to those sections referring to the role of traditional leadership in building a more open, democratic and accountable nation:

> "The role of the House of Chiefs and other traditional leaders will be clearly defined to suit the changing circumstances in Botswana. The co-operative relationship between traditional leaders and elected political leaders will promote social tranquillity and orderly governance." (p.12)

In this connection the Vision Council stated in its own submission to the Commission:

> "We view the sections under review as implying some form of discrimination in that *ex-officio* membership excludes other tribal groups. This is particularly because the nation of Botswana comprises a diversity of tribes with different languages. It is therefore a challenge to all of us to build a united nation that harnesses diversity."

The document goes on to state [page 26],

> "Botswana must deal with problems related to tribalism, and to perceived discrimination against minority ethnic and language groups.' We view the omission of other tribes as not compliant with the Vision of Batswana since the vision encourages participation by all."

The Vision Council was of the further view that there should be:

> "The reviewing of laws and practices that are inconsistent with the full vision and the enjoyment of constitutional rights and to ensure their conformity with the constitutional and international standards as necessary as we move toward the year 2016."

Also frequently cited from the Vision 2016 document was the opening paragraph on Unity and Pride (page 27) which states that: "Botswana contains a diversity of tribes with different languages that are not equally recognised, and there are signs of disunity and separateness. It is vital to meet the challenge of building a united nation that harnesses this diversity."

It was also argued that failure to recognise unity in diversity has reduced many ethnic communities to seemingly second class, or *"fongkong"* status. In this respect, some warned that a failure to embrace unity in diversity could, in the long term, lead to a situation

in which many citizens would no longer identify themselves with the Constitution.

Those citing the Vision 2016 document also drew the Commission's attention to sections dealing with the need for a moral and tolerant nation. It was observed that the document (pages 59-60) warned that Botswana must avoid "voiceless growth", that is, growth that is not accompanied by the "full participation, empowerment and democracy" and avoid "rootless growth", that is, growth that is not inclusive of all ethnic groups."

Cited from the document under "Tolerance" was the injunction (page 12) that:

> "No citizen of the future Botswana will be disadvantaged as a result of gender, age, religion or creed, colour, national or ethnic origin, location, language or political opinions."

Further cited under Tolerance was the need to establish:

> "An atmosphere of tolerance towards minorities or groupings who do not share the attitudes or behaviour of the mainstream is necessary in any well-ordered community. The system of education must stress the value of a multi-cultural society, and the strength that it can offer in terms of international connections and the flexibility to respond to change."

CHAPTER FOUR

4. METHODS OF SELECTING MEMBERS TO THE HOUSE OF CHIEFS.

4.1 Introduction

In its second Term of Reference, Term (b), the Commission was given the task "to review and propose the most effective method of selecting members of the House of Chiefs." On this Term, the Commission received a variety of submissions, including those from people who were of the view that the House should either be abolished or transformed into a more broadly representative body.

4.2 Views in favour of retaining the House of Chiefs

Section 77 (1) states that: "There shall be a House of Chiefs for Botswana." In its deliberations the Commission encountered a variety of opinions as to whether this Section should be retained.

Many felt that the House of Chiefs had a continuing role to play. Frequently cited in this respect was the need for the House to play a leading role in the protection and promotion of those aspects of our culture that will enhance Botswana's future development. Culture was described as both the "soul of the nation" and a prerequisite for development. The first President, the late Sir Seretse Khama's 1970

address to the graduates of the University of Botswana, Lesotho, and Swaziland was often cited in this regard:

> "We were taught, sometimes in a very positive way, to despise ourselves and our ways of life. We were made to believe that we had no past to speak of, no history to boast of. The past, so far as we were concerned was just a blank, nothing more. Only the present mattered and we had very little control over it. It should now be our intention to try to retrieve what we can of our past. We should write our own history books, to prove that we did have a past and that it was a past just as worth writing and learning about as any other. We must do this for the simple reason that a nation without a past is a lost nation, and a people without a past are a people without a soul."

There was a considerable body of opinion that equated the survival of the House of Chiefs with the survival of Chieftainship itself, asserting that the abolition of the former would inevitably lead to the demise of the latter. It was often further stated that Chieftainship was the "glue" that bound together communities and the nation as a whole, and thus should not be disturbed. As one observer noted: "A tribal leader is a symbol of the embodiment of the values, history, and traditions of his people."

Others connected their identity with Chieftainship and suggested that to undermine Chieftainship would be tantamount to betraying one's sense of being.

Opinions in favour of retaining the House of Chiefs came from both those who were supportive and those who were opposed to its current composition. Even some of those who were highly critical of its current level of effectiveness believed that the House should be retained.

4.3 Views opposed to the retention of the House of Chiefs

There were also those who believed that the House has become an anachronism. Some asserted that the House has become divisive and is a potential threat to national unity. Sentiments such as "are we propping up a House that has outlived its usefulness?" were voiced. Other points in opposition to the retention of the House included that:

a) It is a contradiction for a Republic to promote monarchy in its Parliament.

b) The House is sustained by public funds but is not representative of the public as a whole. In this regard, some complained of what they referred to as the ethnic exclusiveness of the House. Others raised the issue of the House's gender imbalance and voiced concern that it is not representative of the Botswana of today and tomorrow.

c) The House was not contributing anything of substance to Botswana's development.

4.4 Current method for Selecting Members to the House of Chiefs

In accordance with Section 77 (2) of the Constitution, the House of Chiefs consists of three categories of membership, eight "*ex-officio*", four "Elected" and three "Specially Elected".

Section 78 defines the *ex-officio* members as persons who "...are for the time being performing the functions of the office of Chief in respect of the Bakgatla, Bakwena, Bamalete, Bamangwato, Bangwaketse, Barolong, Batawana and Batlhokwa Tribes, respectively."

Section 79(1) defines the Elected Members as "...those elected from among their own number by the persons for the time being performing the functions of the office of Sub-Chief in the Chobe, North East, Ghanzi and Kgalagadi Districts respectively."

According to Section 79(2), the Specially Elected Members "...shall be elected by the *ex-officio* and Elected Members of the House of Chiefs in accordance with the provisions of this Constitution from among persons who are not and have not been within the preceding five years actively engaged in politics."

At the beginning of each of its public consultations, the Chairman of the Commission drew the attention of the meeting to the above Sections.

4.5 Public views on the appropriateness of the current method of selecting members to the House of Chiefs

In its consultations, the Commission discovered that opinions were divided as to the appropriateness of the current method of selecting members to the House of Chiefs.

4.5(i) Those who felt that the existing method was appropriate made the following points:

a) That in the context of the historical arguments advanced in Chapter 2, all people in Botswana enjoy representation in the House of Chiefs. Therefore, it is not necessary to change the existing structure.

b) Many defenders of the status quo, nonetheless, conceded that the existing method would be improved if the four Districts currently represented by Elected Members were each encouraged to designate one from among them for inclusion in the *ex-officio* category.

c) Some proposed that the number of *ex-officio* members should either remain unchanged, or be increased to twelve (12) by the inclusion of Chiefs from each of the four Districts. It was also suggested that the number of Specially Elected Members could be increased to allow for greater representation.

d) Others proposed that, while the number of *ex-officio* members should remain unchanged, the membership in the House of Chiefs could be increased to include additional Sub-Chiefs. It was often suggested that the bigger Districts would benefit from the inclusion of Sub-Districts, regional and/or community representatives.

e) The Specially Elected category was seen by some as useful in enhancing the work of the House of Chiefs, hence they suggested that it should be retained. Some went further to suggest that His Excellency the President be given the responsibility of appointing Specially Elected Members. Those expressing this opinion often complained that under the current system, the process is unfairly dominated by the eight *ex-officio* members, with the result that people with special skills were not being selected.

4.5(ii) Those who felt that the existing method of selecting members to the House of Chiefs was inappropriate made the following points, that:

a) Because the country has more tribes than those listed in Section 78, there should be more *ex-officio* Members in the House of Chiefs. In this connection, some were of the view that criteria could be established to determine which tribes should be represented in the House of Chiefs. They suggested that this could be based on such characteristics as population, history, culture, language and other forms of common identity. Many, however, insisted that all tribes and/or communities should be represented in the House of Chiefs irrespective of such attributes as size.

b) Members of the House of Chiefs should be designated from Districts, Sub-Districts and/or defined regions. This could take the form of elections. In this respect, it was observed that certain Districts were large and should, therefore, have additional representation in the House.

c) Local councils of chiefs could be established from which membership to the House of Chiefs would be designated. People holding this view often observed that under the existing arrangement, Chieftaincy was becoming detached from its local constituency. They argued that creating new local Houses of Chiefs would thus be consistent with a perceived need for greater decentralisation. The Commission was further told that the creation of District or regional Houses of Chiefs would greatly enhance representation while avoiding the expense of sending too many Chiefs to the national House of Chiefs. Under such an arrangement, it was contemplated that larger Districts, measured in terms of both geography and demography, would be able to designate more than one member to the national House.

d) Each constituency should have a Chief so that Parliament has a balance between elected and traditional representatives. It was noted that since independence, the Membership of Parliament has been increased in keeping with population growth, while that of the House of Chiefs has remained unchanged.

e) The House of Chiefs should be either transformed or replaced by a more representative body that could still include representative Chiefs. Such a body, often labelled as either a "House of Delegates" or "House of Representatives" could, in addition, provide for gender balance, as well as be representative of such stakeholders/interests as represented by Non-Governmental Organisations (NGOs), religious bodies, labour and other economic and civil society groupings.

f) There were also individuals who were of the view that, over the years, the House of Chiefs had become a useless anachronism that should be abolished.

g) The Specially Elected membership to the House of Chiefs should be abolished. Many who held this opinion alleged that the provision for Specially Elected members had been abused over the years to ensure an even larger representation for the eight listed tribes. It was further alleged that throughout its existence, the House of Chiefs has never had Specially Elected Members from Kgalagadi, North East, Chobe, or Ghanzi.

CHAPTER 5

5. THE EFFICIENCY AND EFFECTIVENESS OF THE HOUSE OF CHIEFS

5.1 Introduction

The Commission was also tasked with proposing and recommending measures to enhance the efficiency and effectiveness of the House of Chiefs. In seeking to address this Term of Reference, we found it necessary to consider what had been the intended role and functions of the House as defined by the Constitution, with specific reference to Sections 85 and 88(2). We thought it also necessary to consider whether the House has fulfilled its mandate within the said Sections. It was then necessary to consider the reasons behind any perceived failure.

Within the context of the Commission's Terms of Reference and the methodologies it adopted for the fulfilment of the same as described in Chapter 1, the above considerations could only be addressed within the context of the oral and written submissions received.

5.2 Role and Functions of the House of Chiefs as defined by the Constitution

Sections 85 and 88 (2) of the Constitution define the role of the House of Chiefs as follows:

Section 85(1): "The House of Chiefs shall consider the copy of any Bill which has been referred to it under the provisions of section 88(2) of this Constitution and the House shall be entitled to submit resolutions thereon to the National Assembly."

Section 88(2) states:

"The National Assembly shall not proceed upon any Bill (including any amendment to a Bill) that, in the opinion of the person presiding, would, if enacted, alter any of the provisions of this Constitution or affect:-

a) the designation, recognition, removal of powers of Chiefs, Sub-Chiefs or Headmen;

b) the organisation, powers or administration of customary courts;

c) customary law, or the ascertainment or recording of customary law; or

d) tribal organisation or tribal property, unless-

(i) a copy of the Bill has been referred to the House of Chiefs after it has been introduced in the National Assembly; and

(ii) a period of 30 days has elapsed from the date when the copy of the Bill was referred to the House of Chiefs."

Section 85(2): "Any resolution which has been submitted to the National Assembly in accordance with the last foregoing subsection shall forthwith be laid before the Assembly by the Clerk of the Assembly."

Section 85 (3): "Any Minister who is responsible for a Bill such as is referred to in subsection (1) of this section, or his representative, may attend the proceedings of the House when the copy of the Bill is considered."

Section 85 (4): "Any Minister may consult the House of Chiefs in respect of any matter on which he desires to obtain the opinion of the House, and for that purpose the Minister or his representative may attend the proceedings of the House."

Section 85 (5): "The House of Chiefs shall be entitled to discuss any matter within the executive or legislative authority of Botswana of which it considers it is desirable to take cognisance in the interests of the tribes and tribal organisations it represents and to make representations thereon to the President, or to send messages thereon to the National Assembly."

Section 85 (6): "A person attending the proceedings of the House of Chiefs by virtue of the provisions of subsection (3) or (4) of this

section shall be entitled to take part in the proceedings of the House relating to the matter in respect of which he attends as if he were a member of the House: Provided that he shall not be entitled to vote in the House."

5.3 Has the House of Chiefs fulfilled its Constitutional Mandate?

With specific reference to the above, the Commission received varying responses from the Members of the House of Chiefs and the general public. Both groups were in general agreement that the House had not been effective in fulfilling its Constitutional mandate, but for varying reasons.

5.4 Public views on the effectiveness of the House of Chiefs

In its consultations with the general public, the Commission was frequently informed that the role and functions of the House of Chiefs were not well known. On a number of occasions, members of the public even requested that the Commission inform them first about the intended role and functions of the House so that they could meaningfully contribute to the discussions. The Commission, whenever it could, endeavoured to accommodate such requests by summarising the appropriate Sections of the Constitution.

The following factors were commonly cited to explain this alleged lack of effectiveness, that:

a) Government and the National Assembly did not take the House seriously. Some people further alleged that they were unaware of any piece of legislation or initiative that had emanated from the House. Some even went so far as to nick-name the House *"**maokaneng**"*, to emphasise the point that whatever it decides is of no consequence.

b) Politics has interfered with, and thus undermined, the proper role of Chieftainship.

c) Members of the House, themselves, had lost their sense of direction by involving themselves in matters that belonged to the domain of politicians. Others, however, asserted that the Members of the House should not be overly confined in carrying out their mandate as they should be able to consider a variety of matters other than cultural concerns.

d) The calibre of some of the Chiefs was disappointing. As a result, the House rarely came up with anything of public value.

e) The existing composition rendered the House ineffective as it failed to be fully representative of the nation's diverse cultural heritage.

f) The House had denied itself the ability to bring in members with additional skills through the alleged abuse of Section 79 (2). On this point, speakers complained that members from the

eight listed tribes caucused together to ensure that only their preferred candidates were selected.

e) There was a seeming lack of accountability on the part of members of the House. In this regard, some stated that Chiefs failed to consult with the communities they represent. Members of the public who claimed to be under-represented or un-represented in the House on the basis of their ethnic identity often made this point. They told the Commission that a true representative should report back to those he/she represents. This sentiment, however, could also be found in areas where no specific claim of autonomous ethnic identity was made. In such communities, the distance from the District Headquarters was cited as an explanation for their chief's alleged failure to consult with them.

f) The traditional authority of Chiefs had been eroded over time. The alleged ineffectiveness of such institutions as the Land Boards and Councils was also mentioned. Many blamed District Commissioners and politicians for undermining Chiefs. They suggested that the original powers and authority of chiefs should be restored for the institution to play a meaningful role in the country's development.

i) The powers of the House have been too limited. This has reduced its effectiveness.

j) The House does not have sufficient capacity to carry out its mandate.

k) The media ignored the House of Chiefs. As a result, it was alleged, the public never got to be informed about what the House was debating.

5.5 The views of Members of the House of Chiefs

Members of the House of Chiefs informed the Commission that they understood and have been fulfilling their Constitutional mandate. They complained, though, that their effectiveness had been compromised over the years by inadequate capacity and the failure of politicians to take the House seriously. In this respect, the following points were made, that:

a) The House has limited powers and, notwithstanding Section 85 (5), is not in a position to initiate any legislation.

b) The House can only meet when there is Government business to discuss, irrespective of whether members themselves see the need to meet.

c) Members of the House do not have a specific budget to allow them to consult with communities.

d) The activities of the House are not sufficiently acknowledged by Government or adequately covered by the media, more especially the public media. The nation is thus not properly informed about the House's activities, hence many assumed that its contribution was insignificant.

e) The House has little in the way of a secretariat and no research capacity. In this respect, the Speaker of the National Assembly, the Hon. Ray Molomo, made the following observations in a separate submission: "the House is being serviced by a secretariat that is responsible to the Speaker/Secretary of the National Assembly, but the Act establishing the House does not make reference to this, thus making the Speaker's intervention a somewhat unauthorised activity."

The Speaker also pointed out that the complaints by Chiefs that their advice is not taken seriously have substance. He stated:

> "In terms of the Constitution, their resolutions are to be submitted to the National Assembly (section 85(1) and (2). This is never done. This situation can be remedied by reforming our procedures in the National Assembly so that the Constitution is complied with, particularly Section 85 (2)...In fact, I have already recognised this as an omission and am in the process of rectifying our procedures."

The Speaker further observed that, as long as the House can only consider Bills referred to it by the National Assembly, they will have nothing else to discuss other than developmental matters. In this process, they will inevitably discuss issues that more appropriately fall within the domain of the National Assembly and/or District Councils. His suggestion was that the House of Chiefs should be allowed to raise issues on any bill if they so desire without prejudice to the right of Parliament to refer a specific Bill to them. In this way, he has argued that their preoccupation with matters concerning the development of the country could be reduced, and such matters would more appropriately be handled by elected representatives. The Speaker was also of the opinion that:

a) The House would benefit from the inclusion of more Specially Elected Members so as to bring in people with specialised skills.

b) Whereas the Chiefs, themselves, fall under the jurisdiction of the Ministry of Local Government, the House itself falls under the Office of the President. The Chiefs voiced their displeasure at what they perceived as being relegated to the status of mere civil servants through their being responsible to the Minister of Local Government. This was also seen as inconsistent with their status. Some even pointed out that Parliamentarians and Ministers are, according to tradition, the subjects of chiefs. In this respect, there was a feeling among some that the House of Chiefs should simply be under the Office of the President.

5.6 Suggested Measures to enhance the effectiveness and efficiency of the House of Chiefs

The Chiefs themselves, and the general public, offered a variety of suggestions as to how the House of Chiefs might be made more effective and efficient. These views can be summarised as follows:

5.6 (a) Restructure the House of Chiefs

The House of Chiefs should be restructured in order to make it more representative. Those expressing this view argued that Sections 77, 78 and 79 were discriminatory. A common requirement mentioned in this regard was that the House needed to reflect Botswana's cultural diversity in its membership. Some wondered how the chief of one ethnic group could effectively represent the culture of other ethnic groups. Examples from language and customs were cited to explain this position.

5.6(b) The House should be more accountable

To achieve this, some suggested that Chiefs should consult more with their people. For large Districts, it was suggested that representation could be increased so that the representatives could effectively represent their constituents.

5.6(c) **Give the House of Chiefs Greater Power**

In this respect, some suggested that:

(i) the House should be able to initiate legislation;

(ii) the House should be able to veto at least some types of legislation such as those dealing with matters of customary law, culture, and land; and

(iii) that many of the traditional powers of Chiefs should be restored, while others insisted that the House of Chiefs should be the supreme branch of Parliament. Others were insistent that the National Assembly must remain as the supreme legislative body.

A more specific point was made that under current arrangements, Resolutions of the House are not considered by the National Assembly on second reading of Bills referred to the House in accordance with Section 85 (1). It was suggested that such Bills should not proceed until the Minister responsible shall have considered the contribution of the House and informed its Members in writing of the outcome of their Resolution. The House should be entitled to convene again before the second reading of such Bills in order to consider the Minister's views. In the event that the Minister and the House do not agree, Minister could go ahead and present the

Bill for a second reading after a three-month waiting period, but such a Bill should only pass by a two-thirds majority.

5.6(d) The House should be free from political interference

On occasion, it was alleged that the effectiveness of the House was undermined by interference on the part of politicians with partisan agendas.

5.6(e) Give the House of Chiefs greater capacity

There was a widely shared view among people with otherwise diverse viewpoints regarding the enhancement of capacity of the House of Chiefs. Three areas identified in this connection were (i) improved secretarial support, (ii) the provision of better facilities and infrastructure, such as office space and computers, and (iii) affording greater budgetary support.

5.6(f) The House should have greater autonomy and enhanced status

In making this point, many asserted that for the House and its Members to be effective, they should be given the respect of community leaders rather than relegated to the status of *de facto* civil servants falling under the Ministry of Local Government. Some connected this with a broader need to elevate the status of Tribal Administrations and Customary Courts within the existing structures

of Government. It was further suggested that the conditions of service for members of the House should be improved.

5.6(g) **That the House should be accorded greater coverage by the media, more especially the public media**

It was often said that by giving the House more coverage in the media, people would be better informed of its activities, and thus be in a better position to both judge and advise on its efficiency.

5.6(h) **Increase the number of Specially Elected Members**

It was stated that such an increase would give the House the benefit of members with additional skills. It was argued that this might be a means of making the House more representative. Some saw this as a way of incorporating excluded ethnic communities, while it was also suggested that it could be used so as to bring in others such as women, the youth, traditional healers, and the disabled.

5.6(i) **Clarify the role and mandate of the House of Chiefs**

Many felt that the House of Chiefs needed to be given a clearer role or mandate. It was sometimes asserted that the existing role of the House was not clearly defined, leading to confusion and inefficiency. Another commonly held view was that the House should focus on issues of culture, more especially by:

(i) convening regular cultural celebrations;

(ii) codifying, harmonising and periodically reviewing customary law;

(iii) promoting national cultural norms, with respect to such matters as funerals, marriage procedures, and inheritance;

(iv) developing the National Development Plan Chapter on culture in development;

(v) assisting in curriculum development; and

(vi) initiating programmes necessary to promote the goal of building a united and proud nation, with special reference to the traditional concept of ***Botho***.

5.6(j) **Increase the calibre of Membership**

The calibre of the House's membership should be raised through better selection procedures that would ensure that only capable people became members. Others also suggested that there should be greater provision for the training of members of the House through both in-service training and academic preparation.

CHAPTER SIX

6. TRADITIONAL LEADERSHIP STRUCTURES IN SELECTED COUNTRIES

6.1 Background

In seeking to address its Terms of Reference, the Commission felt it necessary to examine the role of Chiefs or traditional leaders in other countries. We were interested in examining alternative models on the selection of membership to a national House of Chiefs. We also considered how such other national Houses functioned. In this connection, we sought experiences that might be adapted in order to increase the effectiveness and efficiency of Botswana's House, as well as to avoid pitfalls experienced by others.

In our research, we learned that Botswana was one of the few older democracies to have a national House of Chiefs. For this reason, Botswana's experience of balancing democracy and traditional leadership has often been seen as an example to be emulated elsewhere in Africa. In this respect, we were not able to find any other examples in Africa in which democracy and traditional leadership had co-existed for an extended period of time. Indeed, when seeking information from other parts of the Continent, the Commission was confronted by a number of individuals who believed they had more to learn from us than we from them. The Commission was, nonetheless,

of the opinion that it can learn from both the positive and negative experiences of other countries.

6.2 Traditional Leadership in Emerging Democracies

One of the challenges facing emerging democracies has been to achieve a balance between traditional and democratically elected leadership. This can be explained by the fact that the two are rooted in different value systems. For example, while most forms of traditional leadership are essentially monarchical, that is, being based on birth, democracy is rooted in notions of equality and meritocracy.

Historically, both forms of leadership have evolved in a dynamic fashion. The United Kingdom is a classic example of how a widening of democracy over time has been accompanied by a continuous redefinition of the role of the Crown. Other examples exist throughout Asia and Africa.

In studying the experiences of others, we also found that systems of traditional governance often contained both democratic and non-democratic aspects. An example of democratic consultation in a traditional context can be found in many Arabian monarchies where hereditary rulers convene open audiences to allow ordinary subjects to directly express their concerns. As with the *Kgotla* in Botswana, Chiefs in many other parts of Africa also exercise authority through advisory councils that are open to the participation of all tribesmen.

Many emerging democracies are seeking to build upon such traditional forms of popular participation in decision making.

6.3 Typologies for integrating traditional leadership into contemporary systems of governance

In its examination of the constitutions of other countries, the Commission was able to identify a number of approaches for integrating traditional leadership into contemporary systems of governance.

A number of countries, such as Ghana and Zambia, provide for a National House of Chiefs or Traditional Leaders whose membership is elected by local bodies of chiefs/traditional leaders. This model is currently being adapted for the proposed National House of Traditional Leaders in South Africa. Given their direct relevance to looking into alternatives to our own House of Chiefs, these three examples are detailed below.

Some countries, such as Mozambique and Uganda, have in the past sought to abolish Chieftainship altogether. This has contributed to serious civil strife. Both are currently in the process of restoring and enhancing traditional leadership institutions.

Chieftainship remains strong at the local level in many countries, such as Lesotho and The Gambia, although it does not currently have an institutionalised role within their national Parliaments.

In a few countries, such as Malawi and Zimbabwe, a number of Chiefs or traditional leaders are selected for seats in a Senate or upper House of Parliament, where they sit alongside other representatives.

6.4 Ghana

Ghana's National House of Chiefs is elected from Regional Houses of Chiefs. Each of the country's regions is entitled to be represented by five "paramount" and/or "divisional" Chiefs. The role and functions of the National House as defined by the current, 1992 constitution is to:

- "advise any person or authority charged with any responsibility under this Constitution or any other law for any matter relating to or affecting chieftaincy;

- "undertake the progressive study, interpretation and codification of customary law with a view to evolving, in appropriate cases, a unified system of rules of customary law, and compiling the customary laws and lines of succession applicable to each stool or skin;

- "undertake an evaluation of traditional customs and usage with a view to eliminating those customs and usage that are outmoded and socially harmful;

- "perform such other functions, not being inconsistent with any function assigned to the House of Chiefs of a region, as Parliament may refer to it."

Subject to further appeal to the Supreme Court, Ghana's National House has appellate jurisdiction in any case or matters affecting chieftaincy, which has been determined by the Regional Houses of Chiefs.

In addition to the National and Regional Councils of Chiefs, local level Traditional Councils of Chiefs also exist. Chiefs participate in local administration as appointed members of Regional Co-ordinating Councils and District Assemblies. Thirty percent of the seats in the latter bodies are reserved for Chiefs.

6.5 Zambia

The current Zambian House of Chiefs was established by an amendment to the constitution in 1996. We were informed that prior to this time, the previous one-party government had sought to incorporate chiefs into party structures. The United Independence Party (UNIP) included some Chief's in its Central Committee. It also provided for a national House of Chiefs. Following the restoration of multi-party democracy in 1990, the new government removed Chiefs from organs of local and national government, thus suspending the House of Chiefs. This policy was reversed in 1995 to once more allow representation of traditional leaders on District Councils. The establishment of the revived House of Chiefs has been delayed. It is

expected to be constituted at the end of the year 2000. The role and functions of the House of Chiefs as defined by the Constitution are as follows:

- consider and discuss any Bill dealing with, or touching on, custom or tradition before it is introduced into the National Assembly;

- initiate, discuss and decide on matters that relate to customary law and practice;

- consider and discuss any other matter referred to it for its consideration by the President or approved by the President for consideration by the House; and

- submit Resolutions on any Bill or other matter referred to it to the President, and the President shall cause such resolutions to be laid before the National Assembly.

The Zambian House of Chiefs has twenty-seven members, consisting of three chiefs elected by the Chiefs from each of the nine Provinces of the Republic. Each Province has its own Provincial House of Chiefs. Membership of the house is drawn from 288 Chiefs. There are 4 Paramount Chiefs in the whole of Zambia comprising 1 in the Western Province, 1 in the Northern Province, and 2 in the Eastern Province. There are also 42 Senior Chiefs, and 242 Chiefs in the whole country.

6.6 South Africa

The South African Constitution recognises the role of traditional leadership. In 1997, the Chief Directorate of Traditional Affairs was established in the then Department of Constitutional Development to give support to the institution of traditional leadership. It was charged with formulating a policy on traditional leadership and institutions, including such issues as remuneration and capacity building.

The Chief Directorate has also been involved in the issue of the constitutional position of communities who view themselves as indigenous, such as the Griqua. A body known as the National Griqua Forum was established to represent these groups. During 1998, this body also drafted a model for the constitutional accommodation of these communities. Throughout discussions with the Government, the forum has indicated that the Griqua community is not the only group involved in this issue, and that it is essential that other groupings that view themselves as indigenous should be taken on board.

The Department of Constitutional Development conducted an audit of traditional leadership in an effort to develop new government policy on the issue. Government is now in the process of holding discussions with key stakeholders as to what should be the proper role of traditional leadership in the new democracy. This has generated considerable debate.

In all six Provinces, there already exists Houses of Traditional Leaders. The National House of Traditional Leaders was established in April 1997 by Parliament. As with Zambia, each provincial House of Traditional Leaders nominates three members to represent it in the National House. The House elects its own office bearers.

The National House advises the national Government on the role of traditional leaders and on customary law. It may also conduct its own investigations and advise the country's President on request.

6.7 Lessons from other Countries

In its examination of the role of traditional leadership in other countries, the Commission recognised that the various alternative structures it encountered were in each case the product of a specific set of historical and cultural circumstances. In this respect, particular consideration was given to the fact that many of the countries examined have only recently emerged as multi-party democracies. As such, none of them has an experience that can be directly related to Botswana's own unique circumstances. Examining the experiences of other countries was, nonetheless, of value in providing the Commission with a broader understanding of the difficult and sensitive nature of reconciling traditional leadership with democratic governance. The Commission also benefited from its exposure to alternative models for decentralising chiefly or traditional authority, as well as selecting members to a national House of Chiefs or House of Traditional Leaders.

CHAPTER 7

7. THE QUESTION OF DISCRIMINATION; GUIDING FACTORS AND PRINCIPLES

7.1 Introduction

In carrying out its assignment, the Commission was cognisant of the sensitivity of its task. As was noted in Chapter 1 of this Report, the appointment of the Commission was the result of years of controversy over Sections 77, 78 and 79 of the Constitution. This long-standing controversy over the Sections was reflected in all of its consultations. Members of the public constantly reminded the Commission of the sensitive and emotive nature of the subject. This made its assignment all the more difficult.

While generally the views that were given as submissions have been considered of great value to the Commission, it must be stated that some of the submissions were irrelevant, exaggerated, and debatable and in some cases distorted and misleading. At times the Commission was confronted with emotional, even offensive, expressions that added little value to addressing the issues at hand. The Commission wishes to express its disapproval of such unfortunate and divisive statements.

Much of the passion with which varying views were expressed was to be expected, given that the Sections in question touch on issues of group identity and perceptions of discrimination. World-wide, such

issues are often the source of conflict, to the point of seriously disturbing the peace. We were, therefore, at no time under any illusion that ours was an easy assignment.

Notwithstanding the above, the Commission notes with appreciation that the overall response by the public to its work was a positive reflection of the underlying unity of the nation. Every meeting commenced with a spirited collective singing of the National Anthem. While discussions were at times heated, differences of opinion were respected in the true spirit of the Kgotla injunction: ***Mmualebe o bua la gagwe***. Literally translated, this saying means that every individual is entitled to his or her own opinion.

Despite the divisions of opinion and emotional sentiments that the Commission sometimes encountered, people were unanimous in pleading that nothing must be allowed to destroy the peace and stability that has become a defining feature of our great nation. Examples of ongoing civil strife, attributable in part to tribalism in other parts of the Continent, were frequently cited as situations to be avoided.

The Commission reiterates that many of the views expressed referred to issues that were outside of its Terms of Reference. It would have been a difficult, if not an impossible undertaking, to have strictly restricted commentators to stay within the Terms. The Chairman, for example, would have had to constantly interrupt speakers by ruling that their comments were irrelevant, inevitably giving rise to

a) Such a finding would do more harm than good. It would not persuade those holding a different view of the correctness of any finding we would make. Rather, it would only serve to further cement the evident divisions within our nation on the question, leading to polarisation;

b) It would entail an unnecessary and lengthy legal discourse in respect of a Commission whose purpose is not judicial, but rather to examine the three Sections of the Constitution with the object of revising them, if they are found wanting;

c) Such legal analysis would serve no real purpose, and would otherwise miss the true value of this Commission. The Sections considered by some as discriminatory, and by others not to be, are contained in the Constitution. This document is the fundamental and supreme law of the land. Not only can it not discriminate in the legal sense, but that if it did discriminate, such "discrimination" would in itself be lawful. The real question is not one of legal discrimination but rather the legitimacy of the Sections given that they may be seen as not representing the true will of all the people of this country. In this regard, they are perceived by a section of the population to advantage some while disadvantaging others;

d) With reference to the above, the Commission further notes that a relevant case is currently before the High Court, having been lodged by the Kamanakao Association. The issue, therefore,

might be interpreted as ***sub judice***, and pronouncing on it might well be contemptuous of the Court;

e) Parliament has already taken a decision that the Sections should be made tribally neutral. Our role therefore is to come up with a construction that would eliminate any reasonable interpretation that the Sections in question are discriminatory; and

f) The necessity to accommodate the views of those who perceive the Sections as discriminatory does not depend on the legal correctness of their interpretations. Even some of those who were of the view that the Sections are not discriminatory, conceded that in order to ensure continued harmony and to enhance the process of nation-building, there is need to accommodate the views of those who think the Sections are discriminatory.

The Commission is of the view that the historical, legal, political, moral and religious perceptions, whether correct or not, presented by those interpreting the three Sections as discriminatory are sufficient to warrant their revision. This remains so in the absence of any pronouncement on our part as to whether or not the Sections are discriminatory.

In addition, the Commission holds the view that to avoid making a decision on discrimination would not at all trammel its work. That will also not prevent it from recommending a construction that would

obviate any reasonable interpretation that the said Sections are discriminatory.

Consequently we find and decide that:

1) It is unnecessary to hand down a pronouncement on whether Sections 77, 78 and 79 of the Constitution discriminate, and we propose not to do so;

2) Even if the provisions are not discriminatory, Section 78 is inelegantly and unhappily worded, and has caused offence to some people who do not consider themselves to belong to any of the eight Tribes it describes by name; and

3) Enough of the people of this country are unhappy as a result of the manner in which these provisions are cast. Whether or not they are correct in making the point that the provisions discriminate against them, there is a necessity to recast the provisions to remove the cause or causes of complaint.

7.3 Some Guiding Principles

Given the complexity of the issues at hand, the Commission found it necessary to further rely on the following principles to guide its deliberations:

7.3 (a) **Botswana is a Sovereign and Democratic Republic**

Since independence in 1966, Botswana has progressed as a shining example of democracy through its adherence to the fundamental principles of equality, common citizenship, and respect for individual rights such as freedom of speech, assembly and association. These fundamental freedoms are enshrined in Chapter 2 of the Constitution and have been respected. As a result of its commitment to democracy and the rule of law, Botswana has enjoyed peace and stability for thirty-four years, while much of Southern Africa has struggled to overcome civil and political oppression. For this the country has further enjoyed the respect and admiration of nations around the world. Democracy has now become part and parcel of Botswana's identity.

Botswana's democracy is rooted in its adherence to the twin concepts of ***Therisanyo*** and ***Kagisanyo***. ***Therisanyo*** can best be translated as "consultation". It reflects the process by which Government remains in touch with the people on a continuous basis. ***Kagisanyo*** means "peaceful coexistence within society". It has been a foundation for the country's peace and progress. Both concepts have greatly contributed to good governance.

7.3 (b) **Botswana upholds Common Citizenship under the Law**

Botswana's democracy and common identity is reflected in its strong commitment to a common citizenship for all of its people irrespective

of their race, tribe, place of origin, political opinions, colour, creed, and sex, as provided for in Sections 3 and 15 of the Constitution. This commitment was boldly made at a time when the nation was living in the shadow of Apartheid and Colonialism in the Sub-Continent. It is also reflected in its national symbols such as the colours of the National Flag, the State Seal, and the verses of the National Anthem. These values are greatly cherished and jealously guarded by all citizens of Botswana.

7.3 (c) **Botswana is a proud member of the International Community**

Since independence, Botswana has taken its rightful place among the community of nations. In so doing, it has affirmed its commitment to such international instruments as the Universal Declaration of Human Rights, whose Article 7 affirms that "all are equal before the law and are entitled without discrimination to equal protection of the law", and the African Charter on Human and People's Rights, whose Article 2 states that "every individual shall be entitled to the enjoyment of rights and freedoms recognised and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political and or any opinion, national and social origin, fortune, birth or status." These external commitments are consistent with Botswana's democratic ideals.

7.3(d) Botswana has committed itself to building a United and Proud Nation –Vision 2016

In seeking to meet the challenges of the 21st Century, the people of Botswana have embraced a set of principles that are collected together in the September 1997 document entitled "Long Term Vision for Botswana – Towards Prosperity for All." This "Vision" for progress was the product of extensive consultations among members of the public from all regions and walks of life. As such, the Vision is not a government, but a national blueprint for moving the country forward into the 21st century and beyond. Goals of the Vision include building a united, proud, and tolerant nation. To realise the Vision, therefore, entails harnessing the ethnic and cultural diversity of the nation together for the common good. In this regard, the document states that: **"Botswana must address problems related to tribalism, and to perceived discrimination against the so called minority ethnic and language groups."** (Our own emphasis)

Vision 2016 rests on the foundation of Botswana's five national principles of Democracy, Development, Self-Reliance, Unity and Botho. The fifth principle, Botho, refers to the indigenous concept of earning respect by first giving it, and gaining empowerment by empowering others. The concept challenges the citizens of this country to embrace and accommodate one another in a spirit of togetherness and co-operation.

7.3(e) **Botswana Society has Historically Progressed in a Dynamic Fashion**

The roots of Botswana's current democracy run deep in the history of its people. Like other societies in the world, modern Botswana is the product of its past. Polities have risen and fallen over the course of time. Communities have come together and been broken apart. In the process of these struggles, Botswana has emerged from its pre-colonial and colonial background to become a united, proud and increasingly prosperous nation. In this, all of Botswana's citizens share a common historical identity.

7.3(f) **The existence of the Tribal Territories and the former Crown Lands**

At the time that the Constitution was written, there already was in existence eight Tribal Territories, each one served by a recognised Territorial Chief, and the 4 Districts (the former Crown-Lands). Each of the 12 Territories was the product of a long history and remains a legal and political reality. All have, furthermore, served as building blocks in the formation of Botswana as a united and proud nation.

7.3 (g) **The importance of the past as a guide to the future**

The Commission is reminded of Sir Seretse Khama's 1970 observation that:

"We were taught, sometimes in a very positive way, to despise ourselves and our ways of life. We were made to believe that we had no past to speak of, no history to boast of. The past, so far as we were concerned was just a blank, nothing more. Only the present mattered and we had very little control over it. It should now be our intention to try to retrieve what we can of our past. We should write our own history books, to prove that we did have a past and that it was a past just as worth writing and learning about as any other. We must do this for the simple reason that a nation without a past is a lost nation, and a people without a past are a people without a soul."

7.3 (h) **The Virtue of a Gradual approach to Change**

One important principle that has guided Botswana is that change must be gradual rather than radical, and that any substantial alteration to the peoples' way of life should be carefully considered and planned for. We are, therefore, mindful of an observation made by Mr. Peter Mazebe Sebina 1960 that:

"That today, in this modern world with its concepts of democratic Government, good may come out of evolution, if such evolution is carried out on sane principles. It is, therefore, very important that cautious steps be taken when changes are made in the present system of tribal Government. Poor, spasmodic revolutions would only lead to chaos. It is therefore essential that the "new order" should be built upon the solid

> foundation of the "old order" for the established order tends, from its inevitable rigidity due to long experience and not to antiquity, to become hardened against the intrusion of novelty. But when a stage is reached when an appreciable number of enlightened people who can grasp the principle of politics and socio-economic development come to the fore, the demand for change will be gradual and will automatically come from the tribes themselves without opposition from any element."

Although this local visionary made this philosophical statement four decades ago, the sentiments he expressed remain no less relevant today.

CHAPTER 8

8. FINDINGS AND RECOMMENDATIONS

8.1 Introduction

This Chapter presents our Findings and Recommendations. It is divided into three sections, each of which discusses a specific Term of Reference, and concludes with Recommendations.

8.2 Term of Reference (a): To review Sections 77, 78 and 79 of the Constitution of Botswana, and to seek a construction that would eliminate any interpretation that renders the Sections discriminatory.

This Term is widely worded. It states that the object of the review is to achieve the elimination of any interpretation that renders the Sections discriminatory. It is doubtful that any construction we recommend will satisfy everyone, even if it is practical and sensible. We believe that for the task to be possible of accomplishment, reference to "any interpretation" should be understood to mean any "reasonable" interpretation. Only reasonable objections have value. It is impossible for any law to please every whim or desire of every person or to satisfy the purpose of every person. The test always has to be that only the legitimate and reasonable interests of the people need be served. We consequently find that:

Finding 1: The word "reasonable" should be read into Term of Reference (a) to yield the result that "eliminate any interpretation" means "eliminate any reasonable interpretation."

Finding 2: It is necessary to change the three Sections to ensure that they do not, if objectively read, reasonably cause offence to any citizen.

A proportion of the nation's citizens interprets Sections 77, 78 and 79 of the Constitution as being discriminatory. Even if the Sections are not discriminatory, and we make no finding either way, the fact that enough of the citizenry has the perception that they are, is sufficient cause to warrant the change. In this regard, the Commission took note of all interpretations presented to us, be they legal, historical, political, moral or otherwise.

Many have noted that although the present Constitution has served this country well over the years, it needs to be amended to ensure that the three Sections can not be reasonably interpreted to be offensive to any citizen or tribe.

Some of the citizens who were of the view that the provisions were not discriminatory, nonetheless, suggested that the Sections be altered to eliminate any reasonable complaint that they discriminate. Many, therefore, suggested that the Chobe, Ghanzi, Kgalagadi and North East Districts should each designate their own "Paramount Chiefs."

Finding 3: No tribe or ethnic community should be named in the Constitution.

There is a widely held view that either all tribes or none should be listed in the Constitution. Anything to the contrary would be viewed by those who express this sentiment as reflecting that:

a) All tribes are not of equal standing before the law, that is, some are recognised under the Constitution while others are not. To them this suggests a lack of uniformity in treatment.

b) The unlisted tribes are relegated to the inferior status of ***meratshwana*** (minor and/or subordinate tribes).

c) The Constitution condones and legitimises the discrimination of the unlisted tribes with all its perceived consequences, including the marginalisation of their cultures, languages and identities.

d) The method of selecting members of the House is .seen as discriminatory. Some are elected while others are not, and as a consequence of being unlisted, some tribes are not truly represented in the House.

While the Commission does not necessarily agree with the above views, it nonetheless finds no purpose in naming any tribes or ethnic communities in the Constitution. Secondly, the harmony and unity of

the nation requires that the perception resulting from the naming of some tribes be eliminated, particularly because those who hold this view feel strongly about the matter.

Finding 4: The House of Chiefs should be retained.

There exists strong support for the retention of the House of Chiefs as long as all citizens feel represented in it because many continue to regard Chiefs as an embodiment of the nation's cultural identity and a living link to their past. Some also regard both the House and Chieftainship as having an important role to play in the country's development. The two institutions are perceived as having the potential capacity to further enhance participatory democracy and governance at the local level. Many have, in fact, emphasised the need to continue to build and consolidate the nation's democracy on the foundation of its traditional institutions. The Commission notes that this is consistent with Vision 2016.

Notwithstanding the above general view, the Commission also encountered a body of opinion that the House of Chiefs should either be abolished or replaced by a second Chamber of Parliament. People holding such views frequently complained that the existing House of Chiefs was unrepresentative. Some also dismissed the House's existence as being inconsistent with the democratic values of equality and meritocracy.

The Commission has difficulty entertaining the suggestion that the House should be replaced or transformed into a more broadly representative House that would include representatives from civil society and other stakeholders, including Dikgosi. This idea was often presented under such headings as "House of Representatives" or "House of Delegates". The Commission notes that there was a lack of clarity on the composition and functions of such a House.

The Commission is also of the view that its Terms of Reference precluded its consideration of alternative institutional formations to the existing House of Chiefs.

Finding 5: The nomenclature of the House of Chiefs should be changed.

Many who made submissions to the Commission took the view that the nomenclature of the House of Chiefs should be changed. A number of possible names have been suggested, including: House of Traditional Leaders, House of Indigenous Leaders, House of Dikgosi, Ntlo ya Dikgosi, Ntlo ya Merero ya tsa Ngwao, House of Dikgosi and Delegates, House of Ethnic and Tribal Affairs, and the House of Culture and Traditions.

The name "Chief" is seen by some as demeaning. As a title, "Chief" does not fully and truly reflect the attributes associated with the institution of traditional leadership in Botswana, that is bogosi. The Commission was further informed that the former colonial

Government, in order to downgrade and subordinate their status to that of the British monarchy, imposed the title "Chief". The Commission notes that Members of the House of Chiefs, themselves, have voiced through a Motion tabled in the House of Chiefs, their objections to the title. We are satisfied of the validity of these concerns.

Recommendations for Term of Reference (a):

1. ***Sections 77, 78 and 79 should be repealed/amended.***

2. ***New Sections should be enacted and included in the Constitution to replace the three Sections in question. These new provisions should be cast in terms calculated to ensure that no reasonable interpretation can be made that they discriminate against any citizen or tribe of Botswana.***

The said new Sections should:

3. ***Retain the House of Chiefs as an institution.***

4. ***Alter the nomenclature of the House of Chiefs to "Ntlo ya Dikgosi."***

5. ***Ensure that every citizen is represented in the House.***

6. ***Require that the name "Kgosi" should be used in place of "Chief".***

8.3 **Term of Reference (b): To review and propose the most Effective method of selecting Members to the House of Chiefs.**

Finding 6: To be effective, a method of selecting members to the House of Chiefs should be acceptable to many, and should be practical and sensible. But, such a combination of qualities is hard to find in a single method. Difficult though it may be, such a method is necessary. This method, must as far as possible, accommodate the major interests of this nation.

From the first six Chapters of this Report, it is evident that there is no single method of selecting the Members to the House of Chiefs that will be acceptable to everyone. Public views on this subject were divided as follows:

One view is that of people who are satisfied with the status quo and whose only recommended change, if any, is that the four Districts currently represented by Elected Members should designate permanent representatives who will become *ex-officio* members like the representative of the eight Tribal Territories mentioned in Section 78 of the Constitution. Some also believe the situation could be improved further by increasing the number of representatives from

large Districts such as the Central District.

The other category is that of people who prefer to see Chiefs of all *merafe* represented in the House of Chiefs, even if such a move would push the number of representatives from the current fifteen to over one hundred.

An opposing school of thought is that using ethnicity as a criterion for representation is unworkable and potentially divisive.

They expressed a fear, which the Commission shares, that national unity may be compromised. On the basis of such fears, some people have variously suggested that:

(a) Either the House of Chiefs should be abolished since it is potentially divisive because one cannot have a House of Chiefs without any reference to *merafe*. In this regard, they argue that a Chief can only be a Chief because there is a *morafe* to be led.

(b) Territoriality as opposed to ethnicity is, therefore, the only viable method of selecting Members to the House. They suggested that territorial representation can be on the basis of any of the following: Districts, Sub-Districts, Tribal Territories, or regions specifically designed for this purpose.

(c) The qualification of birth in deciding membership is undemocratic, unfair, and not suitable in a democratic country.

They also allege that such a criterion of selection undermines the efficiency and effectiveness of the House because the most capable people will not necessarily be selected. They, therefore, proposed the creation of an alternative institution, which some referred to as the "House of Representatives", while others called it a "House of Delegates", the membership of which will be based solely on merit.

The Commission recognises that it is almost impossible to successfully reconcile all these diverse viewpoints and devise a method that will satisfy everyone.

Finding 7: There is widespread dissatisfaction with the current method of selecting Members to the House of Chiefs.

There is a perception that the eight *ex-officio* members represent certain *merafe* or tribes, as opposed to all the residents of specific Districts and/or Tribal Territories. Many of those who share this view feel that, unless their own chiefs go to the House of Chiefs, they will remain unrepresented. They are of the view that, by limiting *ex-officio* membership in the House of Chiefs to the eight listed tribes, the Constitution has given the latter special treatment over others.

The Commission notes that the provision for Elected Members has caused frustration as some in the Districts concerned feel that they are unrepresented. There is a general feeling that the provision for Specially Elected membership of the House of Chiefs has been

misapplied. Although this arrangement was originally intended to bring specialised skills into the House, many believe that the provision has been abused for other purposes.

Finding 8: The composition of the House, except in the case of Specially Elected Members, should be of Dikgosi only.

There are enough Chiefs to occupy the House. There is, therefore, no need to include interest groups. It has been argued that their inclusion would diminish the purity of Bogosi, which is essential to the survival of the institution. The House was originally intended to be a forum for Dikgosi, while the politicians had their own fora such as the National Assembly and the Councils. The people generally felt that these considerations are still valid.

The unique role that Dikgosi play in the affairs of their tribes warrants that they should have a House of their own that does not include the various interest groups proposed for inclusion. We recognise the force in these arguments.

Finding 9: All Batswana must be meaningfully represented in the House of Chiefs.

Many have said that ensuring that all Batswana are represented in the House would promote ownership and stakeholdership, in turn enhancing nation-building as people will feel that their interests are better reflected and protected. We accept this argument.

Finding 10: The Specially Elected Members of the House should have specialised training and/or skills.

This proposal was made by some at the Kgotla meetings and in the written submissions. It was argued that because the House is meant for Chiefs only, any other person should become a Member on the basis of specialised skills, in order to add value to the House and enhance its efficiency and effectiveness. Indeed, this was the original rationale, no less valid today, for the concept of special election. We uphold it.

Finding 11: No Member of the House should engage in partisan politics.

Participation in partisan politics can undermine Chieftainship. Because Dikgosi represent all people within their tribes, they are a unifying factor. A separation of Bogosi from partisan politics is crucial to the maintenance of the dignity and respectability of Chieftainship. Involvement in partisan politics can gradually erode the image and stature of Dikgosi.

Recommendations for Term of Reference (b):

1. ***Ensure that territoriality rather than any actual or perceived membership of a tribal or ethnic group forms the fundamental basis for such representation.***

2. ***Prohibit Members of the House from active participation in party politics.***

3. ***Ensure that no Specially Elected Member of the House has served in the elective offices of Councillor or Member of Parliament, and/or to an office within any political party for at least three years prior to becoming a Member of the House.***

4. ***There is a need to formulate a new method for selecting Members to the House of Chiefs. The Commission provides possible methods in the next Chapter.***

8.4 Term of Reference c): To propose and recommend measures to enhance the efficiency and effectiveness of the House of Chiefs.

Finding 12: The House of Chiefs has been less than fully efficient and effective.

There is a strong view among members of the public that the House of Chiefs has been less than fully efficient and effective in fulfilling its Constitutional mandate. Factors cited in explanation of this less than satisfactory performance are summarised in Chapter 5 of this Report.

Finding 13: The House should become more accountable to those it represents.

The Members of the House of Chiefs must consult with the people they represent prior to the sitting of the House, and should report after the sittings.

Finding 14: The House should have a budget devoted to it.

This will enable Members of the House of Chiefs to improve their outreach.

Finding 15: **The functions of the House should be made known to the public.**

The Commission was frequently informed that the role and activities of the House of Chiefs were not well known. During some of the meetings, the Commission was asked to explain the functions of the House. The concern is a valid one.

Finding 16: **The status of Bogosi should be enhanced.**

Many people who submitted said so. They argued that Chiefs still have an important role in society as judicial officers, arbitrators, parent figures, and to some extent, the embodiment of their tribal identity. We accept the validity here of.

Finding 17: **There should be a meaningful partnership between the House of Chiefs and the National Assembly.**

Some people suggested that such a partnership would enhance the effectiveness of the House and dispel the notion that Government does not take the House seriously. We agree.

Finding 18: **Section 85(5) of the Constitution gives the House broad powers. The House should in practice, however, avoid duplicating the**

functions of Councillors and Members of Parliament.

Many of those who spoke on the efficiency and effectiveness of the House expressed concern over the duplication of roles. They submitted that other interests suffer when the House spreads itself too widely, lacks focus, and the duplication of functions results in unnecessary expenditure. We accept these arguments.

Finding 19: **The full participation of Ministers is crucial to the effectiveness of the House of Chiefs.**

The House of Chiefs itself feels strongly about this. They said that for the House to meaningfully debate issues, the relevant Ministers have to participate. Indeed, their participation will enhance the quality of debate, and promote the effectiveness of the House. Furthermore, this will serve as an assurance that Government and the Chiefs are working together for the good of the nation. It will also assure the Chiefs that Government does take them seriously. We agree.

Finding 20: **The House should have a hierarchy of officers parallel to, and independent of the National Assembly. In this regard, the House should have its own Speaker, who shall not be a member of the House, a Clerk, a Committee system and support staff with privileges and functions**

similar to those of officers serving the National Assembly.

Some people proposed that the functional capacity of the House should be expanded in order to cater for its enhanced role and make the House more effective. To further enhance its effectiveness, there is a need to maintain a distinction between the officers of the House of Chiefs and those of the National Assembly. This distinction will ensure that there is no conflict of roles. The enhanced role of the House will require that the Speaker and the Clerk of the House should be full time officers. We agree.

Finding 21: **The Members of the House should continue to nominate the Specially Elected Members of the House.**

Many people still consider that Specially Elected Members could play a role in enhancing the House's efficiency and effectiveness. We agree, believing that if properly utilised, this provision can be of benefit.

Recommendations for Term of Reference (c)

1. ***Enhance the status of Members of the House.***

2. ***Ensure that Ministers participate in the proceedings of the House by amending Section 85 of the Constitution to make it***

compulsory for the Minister responsible for a Bill to attend and participate when it is discussed. No Public Officer should have audience before the House except with the special permission of the House.

3. ***There should be a joint Committee of Members of the House of Chiefs and Members of Parliament, which will act as a link between the two Houses, facilitating communication between them. The Committee will have the responsibility to present the Resolutions of the Committee to Parliament. It will determine its own Chairperson.***

4. ***The House should have a hierarchy of officers parallel to, and independent of, that of the National Assembly. In this regard, the House should have its own Speaker, who shall not be a member of the House, a Clerk, a Committee system, support staff, with privileges and functions similar to officers serving the National Assembly.***

5. ***That Members of the House shall consult the people they represent prior to the sitting of the House and report back following sittings of the House.***

6. ***The House should have budget devoted to it.***

7. ***Members of the House of Chiefs should be afforded the same minimum facilities, as are Members of the National Assembly, both in the House and in the territories they represent.***

8. ***Members of the House should have the right to promote private member's Bills, and the House, itself, the right to initiate legislation.***

9. ***The media should be encouraged to cover the proceedings of the House.***

CHAPTER 9

9. Alternative Models for the Composition of the House of Chiefs

9.1 Introduction

As we noted in the previous Chapters, many people would like to see a House that is more representative of the nation's ethnic and cultural diversity. There are various ways in which this can be achieved. The way to be adopted is that which ensures the widest representation while remaining practical, reasonable, sensible and not too costly. We have noted, found and decided that it would not be practical to have every *morafe* represented in the House. In this Chapter, we provide three models of possible representation. We provide possible advantages and disadvantages of each, and state our preferred Model.

The Commission further wishes to recommend a three-tier structure for the proper and accountable representation of Batswana in the institutions of Chieftainship, territorial and national. These could apply to all the Models, and are:

a) an Electoral College;
b) a Local Chamber of Chiefs; and
c) the national House of Chiefs.

9.2 Electoral Colleges

Each Territory or Region, as the case may be, shall have its own Electoral College for the purpose of designating representatives to Local Chambers of Chiefs. The Electoral Colleges will be comprised of Headmen of Record up to and including the Deputy Chief. The Territorial Kgosi will have the right to attend meetings of the Colleges in their respective Territories. In addition, other individuals may be included in the Electoral College to ensure adequate representation as applicable to each Territory. Such individuals will be identified by the local Tribal Administration in consultation with the Minister responsible. Each Electoral College will determine its Chairperson. The function of the Colleges shall be two-fold:

1. to meet whenever it is necessary for the purpose of designating the members of the Local Chamber of Chiefs; and

2. to present to members of the Local Chamber of Chiefs suggestions and views from the people of the Territory to be taken to the House of Chiefs, and to receive from the members of the Local Chamber of Chiefs feedback from the House of Chiefs for transmission to the people.

9.3 Local Chambers of Chiefs

The Local Chamber will be composed of the head of the Tribal Administration as an *ex-officio* member, and other members

designated by the Electoral College in the Region and/or Territory concerned, as the case may be. The number of Members of the Local Chambers of Chiefs shall be determined in accordance with the needs of each Territory and the Model selected.

The Local Chamber of Chiefs will function as a local division of the national House of Chiefs. Each of these Chambers will be a consultative forum for Members of the House of Chiefs and other chiefs within the respective territories.

The advantages of establishing Local Chambers are that the Chamber will:

i) formalise consultation between the chiefs of each Region and their representatives to the National House of Chiefs;

ii) widen the participation of chiefs in the designation of Members to the National House of Chiefs;

iii) ensure a partnership between the Territorial Chief and the chiefs of the various regions within the Territory;

iv) be more representative of the various cultural groups that are within the Territory; and

v) facilitate the consideration of the diverse viewpoints when resolutions are made in the Local Chamber and subsequently in the National House of Chiefs.

The person for the time being performing the functions of Chief in each of the 12 Territories will be an *ex-officio* Member and Chairman of the Local Chamber of Chiefs. He shall also be an *ex-officio* Member of the national House of Chiefs. The reasons for the *ex-officio* membership and chairmanship of the Local Chamber are as follows:

i) the Chief is the administrative Head of The Tribal Administration in the Territory;

ii) the Chief's Customary Court is the highest court of appeal in the Territory;

iii) the Chief is an *ex-officio* Member of the District Council of the Territory over which he is Chief. He, therefore, participates in the making of decisions pertaining to the planning and development of the Territory; and

iv) he is the recognised traditional leader of the Territory.

In the light of the duties of Chief, we consider it administratively convenient and necessary to include the Chief in the Local Chamber of Chiefs and to make him its chairman. The same reasons apply to

› make the Chief in each Territory an *ex-officio* member
.se of Chiefs.

.e venues for meetings of the Electoral Colleges and Local Chambers can be the existing public facilities in the Region or Territories, as the case may be. It should, therefore, not be necessary to construct special buildings for the Local Chamber of Chiefs.

9.4 The House of Chiefs

The House of Chiefs, whose functions will continue to be defined by Sections 82 (2) and 85 of the Constitution, may be composed as provided for in the Models provided below.

9.5 MODEL A: Include all chiefs or traditional leaders as *ex-officio* Members of the House of Chiefs so that all tribes are represented.

The Commission took note of the suggestion that Section 78 could be modified to list all tribes or *merafe* existing in Botswana, including all of their Chiefs or traditional leaders as *ex-officio* members. The Commission appreciated this view given that many of those who felt excluded by the status quo saw it as the easiest and most just solution. Implementing this Model would require the development of criteria for defining the nation's tribes. This would need to be followed by the compiling of a full inventory of all the nation's tribes.

As the experience of countries such as South Africa, Canada and the USA indicate, the identification of tribes is possible. This could be done with reference to such attributes as historical, linguistic, cultural and geographic identity, as well as population size. The Commission is also of the view that if there is to be an expanded list of tribes, the said list should not appear in the Constitution itself, but could rather be incorporated in separate legislation. This method would have the advantage of allowing for the modification of such a list due to changing circumstances.

Possible Advantages of Model A:

(i) It would satisfy the demand that all tribes, whatever their size and location, be represented in the House of Chiefs. Those who have felt excluded under the present dispensation will finally feel recognised.

(ii) All impressions that some citizens or tribes are superior to others would be eliminated.

(iii) The cultural diversity and varied historical identities of the nation's tribes would be given equal status. This could further cement the unity in diversity of the nation, and guarantee the realisation of Vision 2016 ideals.

Possible disadvantages of Model A:

(i) Implementation could pose serious challenges. This is because, at the moment, there exists no clear and agreed criteria for determining the number of tribes or *merafe* in Botswana beyond the eight already listed in Section 78. Criteria acceptable to all would therefore have to be developed. This may prove to be difficult.

(ii) Any inventory of tribes or *merafe* is likely to be contested by some as being less than fully inclusive. To further illustrate the challenges involved in drawing up a conclusive inventory (see appendix "D"), which provides some alternative lists of tribes or *merafe* of this country as presented to the Commission. The Commission's attention was further drawn to Professor Isaac Schapera's comprehensive ethnic survey of Hut Tax payers in the eight Tribal Territories of the then Bechuanaland Protectorate in the late 1940s (i.e. excluding Kgalagadi, Ghanzi, Chobe, and North East, as well as many Basarwa or Khoisan communities). This publication shows how complex the process of identifying *merafe* can be.

(iii) The very act of compiling an inventory could lead to a continuous process of disintegration of existing communities. This could prove divisive and thus compromise the ideal of building a united and proud nation. It is for this reason that

some people warned that attempting to list all tribes could prove to be a minefield.

(iv) Depending on the number of tribes identified, this Model could impose substantial financial burdens.

Conclusion- Model A: In light of the above disadvantages, the Commission does not recommend this Model.

9.6 Territorial Models – Introduction

The next two Models are based on territory rather than ethnic identity. The Commission favours territory rather than ethnic identity as a basis of selecting Members to the House of Chiefs by reason of the following:

a) Ethnic representation, as opposed to territorial representation, could bring about disintegration of communities. During the consultative meetings conducted by the Commission, it was evident that the mere prospect of a separate representation has resulted in divisions within some communities that previously existed as a single and cohesive unit. It is for this reason that some Batswana opined that ethnic representation would undermine nation building. The Commission agrees with this view.

b) Territoriality or land is a constant, while the concept of tribe or ethnic identity is immutable and ever changing. It is, therefore, futile to try to define 'tribe' in ethnic terms or characteristics. In Botswana, there is no single community that is made up of only one pure ethnic group because groups have co-assimilated due to factors such as intermarriage.

c) Some have proposed that every ethnic group, regardless of where it is found across the country, should have only one representative in the House of Chiefs. We believe that this will make meaningless the concept of representation, because the essence of representation is the accountability of the representative to the represented. While it still remains possible for the chief to meet with all his subjects to account, it will be too costly and meaningless. In any event, the culture and identity, which the chief is supposed to represent, cannot remain unaffected by the community in which a member of an ethnic group lives.

d) It is difficult to ascertain precisely how many tribes or ethnic groups there are in Botswana. The proponents of ethnic representation were themselves unable to provide an accurate figure, or to attest to the accuracy of the figures they provided.

e) From what we have heard about totems (*direto*), and other characteristics supposedly defining tribes or ethnic groups,

there appears to be many ethnic groups in Botswana, and this makes the cost of their representation prohibitive.

f) Botswana continues to welcome new immigrants. This could, in future, add to the number of different tribes and ethnic groups found in the country. Representation by ethnic origin would, therefore, inevitably result in an ever-growing number of representatives in the House.

The Commission recognises that it is possible to devise new criteria for the selection of Members to the House of Chiefs on the basis of territorial representation. There is a range of possibilities in accordance with which territorial representation could be carried out.

A major challenge to implementing any new system of territorial representation would be to devise acceptable criteria for identifying those localities that would be entitled to designate chiefs to the House. One way would be to allow representation by existing administrative units, such as Districts and Sub-Districts, or Tribal Territories, also possibly taking into account zones Gazetted for Remote Area Dwellers Programme. Alternatively, purposely demarcated constituencies and/or other localities could be defined.

Representation by locality could further involve the establishment of a two-tier structure in which local Houses of Chiefs designate members to a national House. The use of local Councils of Chiefs or traditional leaders to designate members to a national House has long been

practised in Ghana, and more recently has become the model for South Africa as well as the revived House of Chiefs in Zambia. In such places as Zimbabwe and Malawi, local councils of Chiefs also exist with the mandate to designate representatives to the upper Houses of Parliament.

9.7 MODEL B: Designate Members to the House of Chiefs from the 12 Existing Territories, while providing for additional representation through Local Chambers of Chiefs

Introduction

This Model is based on:

1. the twelve Territories which together make up the country;

2. each Territory being represented in the House of Chiefs by one person designated as the Kgosi, in accordance with the method customarily employed by the people of the Territory concerned, and recognised to be such by the President; and

3. an addition of four (4) members as the Specially Elected.

The Territories

The said twelve Territories are the following, listed in alphabetical order:

1. **Borolong Territory**

   consisting of the Barolong Farms Tribal Territory.

2. **Central Territory**

   consisting of the area currently served by the Central District Council.

3. **Chobe Territory**

   consisting of the area known as the Chobe District.

4. **Ghanzi Territory**

   consisting of the area known as the Ghanzi District.

5. **Kgalagadi Territory**

   consisting of the area known as the Kgalagadi District.

6. **Kgatleng Territory**

consisting of the Bakgatla Tribal Territory.

7. **Kweneng Territory**

consisting of the Bakwena Tribal Tierritory.

8. **Malete Territory**

consisting of the Balete Tribal Territory.

9. **Ngamiland Territory**

consisting of the Batawana Tribal Territory.

10. **Ngwaketse Territory**

consisting of the Bangwaketse Tribal Territory.

11. **North-East Territory**

consisting of the area known as the North-East District.

12. **Tlokweng Territory**

consisting of the Batlokwa Tribal Territory.

Territorial Boundaries

1. The Tribal Territorial boundaries are as defined in the Tribal Territories Act [Cap. 32.03].

2. The boundaries of the Barolong Farms Territory are as defined in Schedule B of the Botswana Boundaries Act [Cap. 03:01].

3. The District boundaries are as defined in the Administrative Districts Act [Cap. 03:02].

Scheme of Representation

This will take the form of a three-tier system comprising:

1. the Electoral College;

2. the local Chamber of Chiefs; and

3. the national House of Chiefs.

The Electoral College

For the purposes of this Model, each Territory shall have its own Electoral College for the purpose of designating representatives to the Local Chambers of Chiefs. The Electoral Colleges will be comprised of Headmen of Record up to and including the Deputy Chief. In

addition, other individuals may be included in the Electoral College to ensure adequate representation as applicable to each Territory. Such individuals will be identified by the local Tribal Administration in consultation with the Minister Responsible. The Territorial Head of Tribal Administration will have the right to attend meetings of the Colleges in his Territory.

The functions of the Colleges shall be two-fold:

1. to meet whenever it is necessary for the purpose of determining the members of the Local Chamber of Chiefs.

2. to present to members of the Local Chamber of Chiefs suggestions and views from the people to be taken to the House of Chiefs, and to receive from the members of the Local Chamber of Chiefs feedback for transmission to the people.

The Local Chamber of Chiefs

The number of Members of the Local Chambers of Chiefs shall be determined in accordance with the needs of each Territory and the Model selected, and shall consist of:

1. the Territorial Kgosi as chairman where available; and

2. such other members as shall be determined by the Electoral College siting together.

The House of Chiefs

The House of Chief shall have 16 members, and shall consist of:

1. such persons for the time being designated, in accordance with the method customarily employed by the people of the Territory concerned to identify their Kgosi, in the 12 Twelve Territories afore-named, and each such Kgosi having been recognised, in the case of those not at this time designated, by the President.

2. Four Specially Elected Members to be elected by the House of Chiefs solely on the basis of special qualifications and/or skills.

Should any of the Territories of Chobe, Ghanzi, Kgalagadi, North-East be unable to designate a Kgosi for their Territory, the provisions of the current Section 79 shall continue to apply until such time as the Territory concerned shall have been able to designate its Kgosi.

Tenure:

A member of the Electoral College, local Chamber of Chiefs and national House of Chiefs shall cease to hold office upon another person lawfully assuming his office within the Territory, in which

event the new member shall forthwith and ipso facto become a member of the College or House of Chiefs, as the case may be.

Table 1: Summary of Allocations

Territory	Electoral College	Local House	House of Chiefs
Barolong	15+	10	1
Central	178+	19	1
Chobe	12+	10	1
Ghanzi	17+	8 +	1
Kgakagadi	29+	8 +	1
Kgatleng	33+	10	1
Kweneng	62+	13	1
Malete	6+	6+	1
Ngamiland	60+	13	1
Ngwaketse	55+	13	1
North East	31+	10	1
Tlokweng	3+	3+	1
TOTAL			12

Specially Elected: 4 **Total: 16**

Possible advantages of Model B:

- The introduction of the Local Chambers of Chiefs, will decentralise Bogosi and bring about the necessary consultation advocated by many people.

- It will guarantee continuity in the House of Chiefs; thus satisfying those who are already content with the status quo.

- ❖ Membership in the House of Chiefs translates into territorial representation.

- ❖ It will ensure that all are clearly represented on a territorial basis.

Possible Disadvantages of Model B:

- ❖ its implementation might prove difficult as the Tribal Communities within each of the four Districts each have their own chiefs and identities. These communities have historically not agreed to surrender their separate identities.

- ❖ It might lead to new perceptions of discrimination on the part of some Tribal Communities whose immediate tribal leaders are not accorded membership to the House. Further arguments could arise to the effect that, unlike the situation in the Tribal Territories of the eight listed tribes; there would be no historical basis for the Chief of one Tribal Community to be ranked above the Sub-Chiefs of the other Tribal Communities.

- ❖ It might not, in the view of some, fully address the perceptions of discrimination and exclusion held by a considerable segment of the population living in some of the Tribal Territories currently represented by the eight *ex-officio* Members.

- ❖ It could potentially lead to competition between royal families or dynasties for the designation of Chief or Kgosi for a given Tribal

Territory. This in turn could potentially open the door to both political and inter-tribal competition over Bogosi.

- ❖ For some Territories it would necessitate the formation of large Electoral Colleges.

Conclusion: By reason of the disadvantages listed above, the Commission does not recommend this Model.

9.8 MODEL C: Twelve Territories with additional regional/ Sub-District representation

This is a territorial Model that provides for the division of the country into twelve Territories coinciding with the existing 8 Tribal Territories and the four Districts of Ghanzi, Kgalagadi, North East, and Chobe. Of the twelve Territories, six are further divided into Regions.

The following factors explain, in varying degrees, why only 6 of the 12 Territories are divided into Regions, and how the Regions themselves were demarcated:

- ♦ population distribution and density;
- ♦ the Territory's vastness and population sparsity;
- ♦ existing sub-district structures;

Ngamiland Territory

This Territory comprises the current North West District council area, excluding the Chobe District. It is divided into 3 regions as follows:-

1. ***Maun Region***

This Region comprises the existing Parliamentary Constituency of Muan-Chobe, but excluding the Chobe District.

2. ***Ngami Region***

This Region comprises the existing Parliamentary Constituency of Ngami.

3. ***Okavango Region***

This Region comprises the existing Parliamentary Constituency of Okavango.

Kweneng Territory

This Territory comprises the current Kweneng District council area. It is divided into 3 regions as follows:-

1. ***Molepolole Region***

This Region comprises the existing Parliamentary Constituencies of Molepolole, Lentsweletau, and Mogoditshane.

2. ***Thamaga Region***

This Region comprises the existing Parliamentary Constituency of Thamaga.

3. ***Kweneng West***

This Region comprises the existing Parliamentary Constituency of Letlhakeng.

Ngwaketse Territory

This Territory is the current Bangwaketse Tribal Territory and it is divided into 3 regions as follows:

1. ***Kanye Region***

This Region comprises the existing Parliamentary Constituencies of Kanye, and Ngwaketse South.

2. ***Moshupa Region***

This Region comprises the existing Parliamentary Constituency of Moshupa.

3. ***Ngwaketse West Region***

This Region comprises the existing Parliamentary Constituencies of Ngwaketse West.

Ghanzi Territory

This Territory comprises the current Ghanzi District council area and it has been divided into 2 regions as follows:

1. ***Ghanzi West Region***

This Region comprises the area served by the Charles Hill Sub-District administration.

2. ***Ghanzi East Region***

This Region comprises those parts of the Ghanzi District not served by the Charles Hill Sub District administration.

Kgalagadi Territory

This Territory comprises the current Kgalagadi District council area and it has been divided into 2 regions as follows:

1. ***Kgalagadi North***

This Region comprises the area currently served by the Hukuntsi Sub district administration.

2. ***Kgalagadi South***

This Region comprises the area of the Kgalagadi district not served by the Hukuntsi Sub District administration.

The following six territories have not been divided into regions.

1. **Kgatleng Territory**

This Territory comprises the current Bakgatla Tribal Territory.

2. **Tlokweng Territory**

This Territory comprises the current Batlokwa Tribal Territory.

3. **Malete Territory**

This Territory comprises the current Bamalete Tribal Territory.

4. **Borolong Territory**

This Territory comprises the current area of Barolong Farms area.

5. **North East Territory**

This Territory comprises the current North East District.

6. **Chobe Territory**

This Territory comprises the current Chobe District.

Electoral Colleges

For the purposes of this Model, each region shall have its own Electoral College for the purpose of designating representatives to Local Chambers of Chiefs and the national House of Chiefs. In those Territories that do not have Regions, there will be a single, territory-wide, Electoral College.

Electoral Colleges in Territories with Regions will in each case be empowered to designate 4 members to the Local Chamber of Chiefs, one of whom shall go to the national House of Chiefs. Electoral

Colleges in the Territories without Regions will be empowered to designate not more than 10 members to the Local Chamber of Chiefs. All persons designated in each Territory shall become members of the House of Chiefs shall act as the representatives of their respective Territories.

The Electoral Colleges will be comprised of Headmen of Record up to and including the Deputy Chief. The Territorial Head of Tribal Administration will have the right to attend meetings of the Colleges in his Territory. In addition, other individuals may be included in the Electoral College to ensure adequate representation as applicable to each Region and Territory. Such individuals will be identified by the local Tribal Administration in consultation with the Minister responsible.

Local Chambers of Chiefs

Each Territory will have a Local Chamber of Chiefs whose Chairman shall be the Territorial Head of Tribal Administration.

Tenure

Members of the Local Chamber of Chiefs will serve for a period of three years. Except for Territorial Heads of Tribal Administration, who will be *ex-officio* members, all members of the House of Chiefs will serve for a period of three years. This is intended to ensure wide representation through regular turnover. The Model recognises that in

certain Regions, there may be a deliberate decision by the Electoral Colleges concerned to re-elect representatives for another period of three years.

Proposed Allocations of Members to the Local Chambers of Chiefs and the House of Chiefs

TABLE 2: Territories with Regions

CENTRAL TERRITORY

Table 2 (a)

Region	Local Chamber	National House
Serowe	4	1
Tonota	4	1
Tswapong	4	1
Bobirwa	4	1
Tutume	4	1
Boteti	4	1
Sub Total	24	6
Territorial Head of Tribal Administration	1	1
TOTAL	25	7

NGAMILAND TERRITORY

Table 2 (b)

Region	Local Chamber	National House
Maun	4	1
Ngami	4	1
Okavango	4	1
Sub-Total	12	3

Territorial Head of Tribal Administration	1	1
TOTAL	13	4

KWENENG TERRITORY

Table 2(c)

Region	Local Chamber	National House
Molepolole	4	1
Thamaga	4	1
Kweneng West	4	1
Sub-Total	12	3
Territorial Head of Tribal Administration	1	1
TOTAL	13	4

NGWAKETSE TERRITORY

Table 2(d)

Region	Local Chamber	National House
Kanye	4	1
Moshupa	4	1
Ngwaketse West	4	1
Sub-Total	12	3
Territorial Head of Tribal Administration	1	1
TOTAL	13	4

GHANZI TERRITORY

Table 2 (e)

Region	Local Chamber	National House
Ghanzi East	4	1
Ghanzi West	4	1

Sub –Total	8	2
Territorial Head of Tribal Administration	1	1
TOTAL	9	3

KGALAGADI TERRITORY

Table 2 (f)

Region	Local Chamber	National House
Kgalagadi North	4	1
Kgalagadi South	4	1
Sub-Total	8	2
Territorial Head of Tribal Administration	1	1
TOTAL	9	3

TABLE 3: Territories without Regions

Territory	Local Chamber	National House Representation by Territorial Head of Tribal Administration only
Kgatleng	Not more than 10	1
Tlokweng	Not more than 10	1
Malete	Not more than 10	1
Borolong	Not more than 10	1
North East	Not more than 10	1
Chobe	Not more than 10	1

In the case of Chobe and the North East, their elected representatives to the House of Chiefs shall become the chairpersons of their local Chambers of Chiefs. In the Kgalagadi and Ghanzi Territories, the Chairperson of the Local Chamber of Chiefs will go to the national House of Chiefs along with the two Regional representatives. However, should any of the 4 Territories designate a Territorial Head

of Tribal Administration, such Heads will become *ex-officio* members of the House of Chiefs and will, accordingly, become Chairpersons of the Local Chambers of Chiefs.

TABLE 4: Summary of Allocations

Territory	Local Chamber	National House
Central	25	7
Ngamiland	13	4
Kweneng	13	4
Ngwaketse	13	4
Ghanzi	9	3
Kgalagadi	9	3
Kgatleng	10	1
Tlokweng	10	1
Malete	10	1
Borolong	10	1
North East	10	1
Chobe	10	1
SUB TOTAL	142	31
Specially Elected Members	Not applicable	2
TOTAL	142	33

See Figure "B" for Map on Territories and Regions.

Possible Advantages of Model C

1. The introduction of the Local Chambers of Chiefs, will decentralise Bogosi and bring about the necessary consultation advocated by many people.

2. In those Territories where there are Regions, it will give the local Dikgosi the opportunity to designate members to the National House of Chiefs.

3. It will broaden participation without necessarily resulting in the establishment of a numerically large House of Chiefs.

Possible Disadvantages

The Model is, however, not completely devoid of the ethnicity factor.

Conclusion

This Model is recommended as it is also in conformity with the Commission's Preamble at Page 1 of this Report.

The Recommendations and Models set out above will, if accepted, necessitate an amendment to the Constitution to give them effect. We provide in the next Chapter a summary of the principles to guide the potential drafting of the resulting provisions.

CHAPTER 10

10. PRINCIPLES FOR DRAFTING

Term of Reference (a) requires us to "seek a construction" which would eliminate any interpretation that Sections 77, 78 and 79 are discriminatory. There are two possible interpretations to the phrase "to seek a construction." It can mean either the drafting of provisions to replace Sections 77, 78 and 79, or the propounding of the principles which, when translated into constitutional provisions, would meet the objective of the Term.

We doubt that it was expected of us to actually draft the provisions that might result from the work of the Commission for the following reasons:

1. The Attorney General's office is the legal advisor to Government. Once Government has determined which recommendations to accept, it will, as it ordinarily would, instruct the Drafting Division of the Attorney General's office to draft the provisions corresponding to, and emanating from the accepted recommendations.

2. Even if we were to draft the provisions, the Drafting Division of the Attorney General's Chambers as the official legal advisors to and the specialist and expert drafters of Government legislation, would still have to re-draft the provisions to ensure consistency of form and style.

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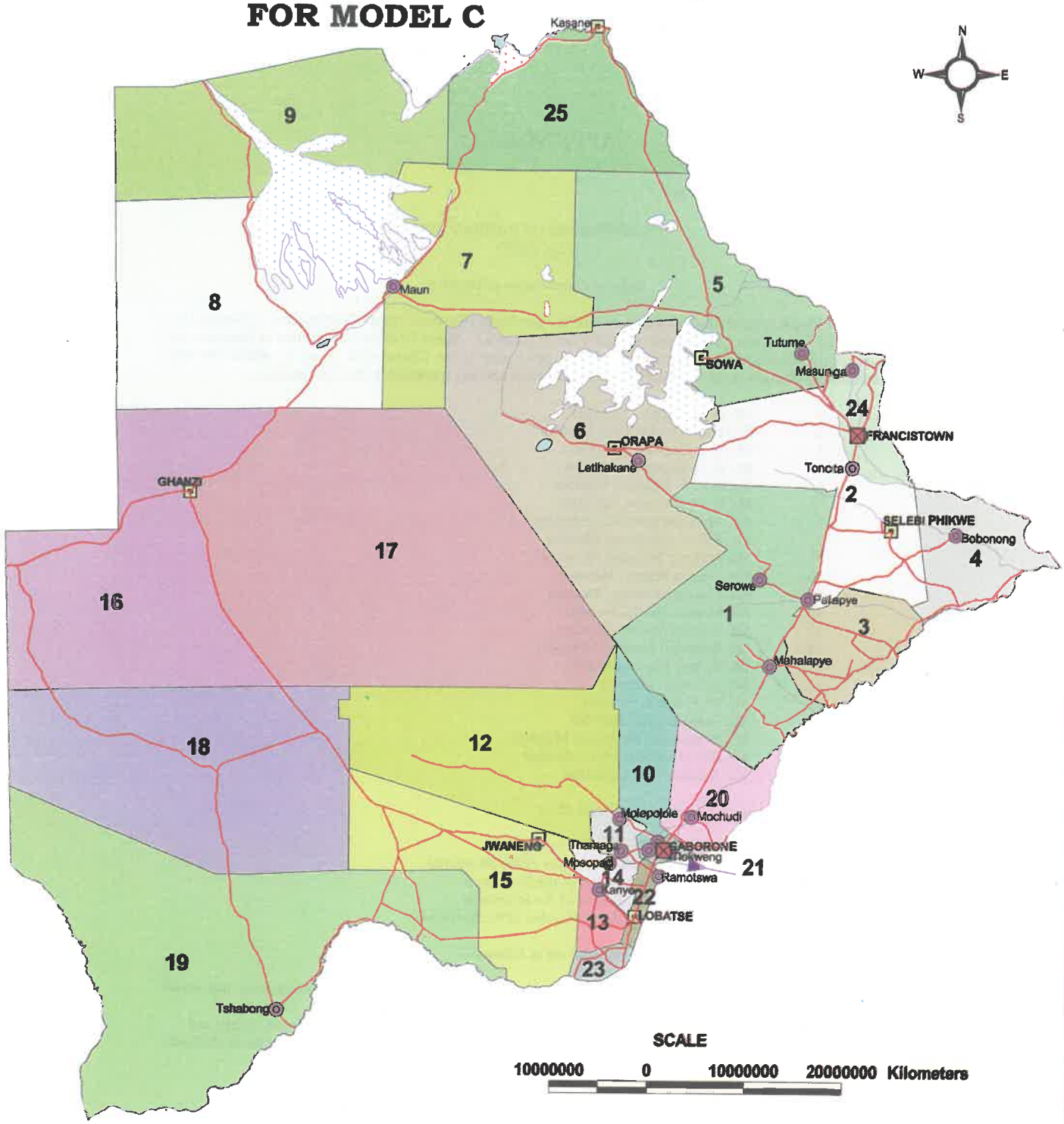
Figure B

TERRITORIES AND REGIONS FOR MODEL C



REFERENCE

City		4	Bobirwa	19	Kgalagadi South	15	Ngwaketse West
Towns		23	Borolong	20	Kgatleng	24	North East
Majosymb		6	Boteti	12	Kweneng West	9	Okavango
Roads		25	Chobe	2	Tonota	1	Serowe
Rivers		17	Ghanzi East	22	Malete	11	Thamaga
Pans		16	Ghanzi West	7	Maun	21	Tlokweng
Lakes		13	Kanye	10	Molepolole	3	Tswapong
Swamp		18	Kgalagadi North	14	Moshupa	5	Tutume
				8	Ngami		

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APPENDIX A:

Government Notice No. 274 of 2000

COMMISSIONS OF INQUIRY ACT
(Cap. 05:02)

Issue of Commission of Inquiry

NOTICE IS hereby given that in accordance with the provisions of section 2 of the Commissions of Inquiry Act, the President has issued a Commission of Inquiry into sections 77, 78 and 79 of the Constitution of Botswana, to determine the appropriate construction of the said provisions of the Constitution, so as to uphold the non discriminatory position of the Constitution on tribal matters, and has appointed to the Commission —

1. Mr. P. K. Balopi, Chairman
2. Professor Thomas Tlou, Member
3. Mr. B. P. Bagwasi, Member
4. Mr. O. O. Segopolo, Member
5. Kgosi M. S. Malema, Member
6. Mr. G. M. Kwerepe, Member
7. Ms. Myra Sekgororoane, Member
8. Mr. Xukuri Blockman, Member
9. Mr. Anthony Moapare, Member
10. Ms. Leungo Marata, Member
11. Ms. Lesang Abotseng, Member
12. Mr. Moraka Modie, Member
13. Mr. Andrew Mopipi, Member
14. Ms. Sethokgo Sechele, Member
15. Mr. Sydney Pilane, Member
16. Mr. G. Oteng, Member
17. Mr. M. F. Katse, Member
18. Mr. Oteng Suping, Member
19. Mr. Tshipietsile Mothelesi, Member
20. Mr. Simon Tatolelo Meti, Member
21. Ms. Beaulah Sekga, Member

2. The Secretariat of the Commission consists of —

1. Mr. J. B. Gabaake, Head of Secretariat
2. Dr. Gloria Somolekae, Member of the Secretariat
3. Dr. Jeff Ramsay, Member of the Secretariat
4. Mr. B. K. Sentle, Member of the Secretariat
5. Mr. S. S. Modimakwane, Member of the Secretariat

3. The Terms of Reference of the Commission are as follows —

(*a*) to review sections 77, 78 and 79 of the Constitution of Botswana, and to seek a construction that would eliminate any interpretation that renders the sections discriminatory;
(*b*) to review and propose the most effective method of selecting Members of the House of Chiefs; and
(*c*) to propose and recommend measures to enhance the efficiency and effectiveness of the House of Chiefs.

4. The relevant sections of the Constitution to be reviewed are as follows —

77. (1) There shall be a House of Chiefs for Botswana.
(2) The House of Chiefs shall consist of-
(*a*) eight *ex-officio* Members;
(*b*) four Elected Members; and
(*c*) three Specially Elected Members.

78. The *ex-officio* Members of the House of Chiefs shall be such persons as are for the time being performing the functions of the office of Chief in respect of the Bakgatla, Bakwena, Bamalete, Bamangwato, Bangwaketse, Barolong, Batawana, and Batlokwa Tribes, respectively.

79. (1) The Elected Members of the House of Chiefs shall be elected from among their own number by the persons for the time being performing the functions of the office of Sub-Chief in the Chobe, North East, Ghanzi and Kgalagadi districts, respectively.

(2) The Specially Elected Members of the House of Chiefs shall be elected by the *ex-officio* and Elected Members of the House of Chiefs in accordance with the provisions of this Constitution from among persons who are not and have not been within the preceding five years actively engaged in politics.

5. All persons wishing to give evidence or place material before the Commission should contact —

The Secretary
Commission of Enquiry on Sections 77, 78 and 79 of
the Constitution of Botswana
Private Bag 001
Gaborone
Botswana
Tel: 350867
Fax: 581028

DATED this 28th day of July, 2000.

F.G. MOGAE,
President.

L2/7/118 I

Government Notice No. 407 of 2000

COMMISSION OF INQUIRY ACT
(Cap. 05:02)

Substitution of Member to Commission of Inquiry

NOTICE IS HEREBY given that in accordance with the provisions of section 5 of the Commissions of Inquiry Act, the President appoints Mr B.G. Makobole to substitute Professor Thomas Tlou, with effect from the 1st day of August, 2000 as member of the Commission of Inquiry into sections 77, 78 and 79 of the Constitution of Botswana, issued by the President on the 28th day of July, 2000.

DATED this 2nd day of November, 2000.

F.G. MOGAE,
President.

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APPENDIX B

PRESIDENTIAL COMMISSION OF INQUIRY INTO SECTIONS 77, 78 AND 79 OF THE CONSTITUTION OF BOTSWANA

SCHEDULE OF PUBLIC MEETINGS

WEEK 1

DAY	DATE	TIME	PLACE	VENUE
Tuesday	08.08.2000	09.00 hrs	Ramotswa	Kgotla
"	" " "	14.30 hrs	Tlokweng	Kgotla
Wednesday	09-08-2000	09.00 hrs	Goodhope	Kgotla
"	" " "	14.30 hrs	Lobatse	Kgotla
Thursday	10-08-2000	09.00 hrs	Kanye	Kgotla
"	" " "	14.30 hrs	Mmathethe	Kgotla
Friday	11-08-2000	09.00 hrs	Moshupa	Kgotla
"	" " "	14.30 hrs	Thamaga	Kgotla

WEEK 2

Monday	14-08-2000	09.00 hrs	Molepolole	Kgotla
"	" " "	14.30 hrs	Letlhakeng	Kgotla
Tuesday	15-08-2000	14.30 hrs	Mochudi	Kgotla
"	" " "	14.30 hrs	Mmathubudukwane	"
Wednesday	16-08-2000	10.00 hrs	Shoshong	Kgotla
"	" " "	14.30 hrs	Mahalapye	Kgotla

Sleep at Palapye

Thursday	17-08-2000	09.00 hrs	Sefhare	Kgotla
Friday	18-08-2000	09.00 hrs	Gaborone	Commission Meets

Return to Gaborone

WEEK 3

DAY	DATE	TIME	PLACE	VENUE
Wednesday	23-08-2000	10.00 hrs	Serowe	Kgotla
"	" " "	14.30 hrs	Palapye	Kgotla

Sleep at Palapye

Thursday	24-08-2000	09.00 hrs	Lerala	Kgotla
"	" " "	14.30 hrs	Bobonong	Kgotla

Sleep at Selebi-Phikwe

Friday	25.08.2000	09.00 hrs	Mmadinare	Kgotla
"	" " "	14.30 hrs	Selebi-Phikwe	Kgotla

Sleep at Selibe-Phikwe

Return to Gaborone

WEEK 4

Tuesday	30-08-2000	09.00 hrs	Tsabong	Kgotla
"	" " "	14.30 hrs	Hukuntsi	Kgotla

Sleep at Gantsi

Wednesday	30-08-2000	09.00 hrs	Charleshill	Kgotla
"	" " "	14.30 hrs	Gantsi	Kgotla

Return to Gaborone

Thursday	31.08.2000	09.00 hrs	Gaborone	Commission Meets

WEEK 5

DAY	DATE	TIME	PLACE	VENUE
Monday	04-09-2000	10.00 hrs	Shakawe	Kgotla
"	" " "	14.30 hrs	Gumare	Kgotla
		Sleep at Maun		
Tuesday	05-09-2000	09.00 hrs	Maun	Kgotla
"	" " "	14.30 hrs	Kasanae	Kgotla
		Sleep at Kasane		
Wednesday	06-09-2000	09.00 hrs	Nata	Kgotla
"	" " "	14.30 hrs	Tutume	Kgotla
		Sleep at Francistown		
Thursday	07-09-2000	10.00 hrs	Letlhakane	Kgotla
		Sleep at Francistown		
Friday	08-09-2000	09.00 hrs	Masunga	Kgotla
"	" " "	14.30 hrs	Tonota	Kgotla
		Sleep at Francistown		
Saturday	09.09.2000	09.00 hrs	Francistown	Kgotla
"	" " "	2.40 – 5.00 pm.	Oral Submissions	Civic Centre

Sleep at Francistown

Sunday	10-09-200	**Return to Gaborone**		
Thursday	14-09-2000	09.00 hrs	Lentsweletau	Kgotla
"	" " "	14.30 hrs	Mogoditshane	Kgotla
Friday	15-09-2000	09.00 hrs	Mabutsane	Kgotla
"	" " "	14.00 hrs	Jwaneng	Kgotla
Saturday	16-09-2000	09.00 hrs	Gaborone	Trade Fair Grounds
Monday	18-09-2000	09.00 hrs	Gaborone	Commission Meets
Tuesday	19-09-2000 to Thursday 21st September, 2000			Parliamentary Village
Oral individual submissions at Boipuso hall – Gaborone				
" "	" "	09.00 hrs to 12.30 and from		
" "	" "	14.00 hrs – 16.00 hrs		

DAY	DATE	TIME	PLACE	VENUE
Tuesday	19-09-2000	09.00 hrs	Oral Individual Submissions	Boipuso Hall
Wednesday	20-09-2000	09.00 hrs	Oral Individual Submissions	Boipuso Hall
		14.30 hrs	Lentswe La Batswapong	Boipuso Hall
Thursday	21.09.2000	09.00 hrs	Oral Individual Submissions	Boipuso Hall
		09.30 hrs	Messrs Nwako & Seema	Boipuso
		10.00 hrs	Mr. A.M. Mogwe	Boipuso Hall
		14.30 hrs	Sir Ketumile Masire	Boipuso Hall
Friday	22.09.2000	09.00 hrs	Bokspits	Kgotla
		Back to Gaborone		
Monday	25.09.2000	09.00 hrs	Rakops	Kgotla
"	" " "	15.00 hrs	Seronga	Kgotla
		Sleep at Maun		
Tuesday	26.09.2000	10.00 hrs	Sehitwa	Kgotla
"	" " "	15.30 hrs	Rre M. Mpho	Maun
		Sleep at Maun		
Wednesday	27-09-2000	10.00 hrs	New Xade	Kgotla

Back to Gaborone

Thursday	28-09-2000	09.30 hrs	House of Chiefs
Tuesday	03-10-2000	10.00 hrs	Leave for Francistown

Sleep at Francostown

Wednesday	04-10-2000	08.30 hrs – 12.00 hrs	Tsamaya Kgotla
		14.30 – 5.00 hrs	Maokatuma kgotla

Sleep at Palapye

Thursday	05-10-2000	09.00 hrs	Malatswai Kgotla
		14.30 hrs	Moiyabana Kgotla

Sleep at Palapye

Friday	09-10-2000	09.00 a.m.	Dibete Kgotla
		14.30 p.m.	Artesia Kgotla
	12-18-10-2000	External Trips	
Thursday	19-10-2000	08.30 hrs	Botswana Youth Council Kanye
		14.30 hrs	Oral Parliamentary Submissions Village
Friday	20-10-2000	08.30 hrs	Oral Parliamentary Submissions Village

APPENDIX C

LIST OF THOSE WHO ATTENDED THE LOBATSE CONSTITUTIONAL CONFERENCE 1963

Her Majesty's Commissioner

Mr R.P. Fawcus, C.M.G., O.B.E.

Bechuanaland Democratic Party

Mr S.M. Khama, O.B.E., M.E.C.
Mr Q.K.J. Masire, M.L.C.
Mr M.P.K. Nwako

Bechuanaland People's Party

(Mr Motsete's Party)
Mr K.T. Motsete
Mr P.G. Matante
Mr T.W. Motlhagodi

Bechuanaland People's Party

(Mr Mpho's Party)
Mr M.K. Mpho
Mr B.D. Macheng
Mr M.M. Tlale

Chiefs

Kgosi Bathoen II, C.B.E., M.E.C.
Kgosi Mokgosi III, M.B.E., M.L.C.
Kgosi Linchwe II

European Members of Legislative Council

Mr D.J.C. Morgan, M.E.C.
Mr J.G. Haskins, O.B.E., M.L.C.

Mr C.J. Mynhardt, M.L.C.

Asian Members of Legislate Council

Mr A.C. Chand, M.L.C.

Official Advisors

Mr A.J.A. Douglas, O.B.E., Chief Secretary
Mr A.G. Tilbury, O.B.E., Attorney-General

APPENDIX "D"

SOME LISTS OF BOTSWANA TRIBES

LIST 1

1. Babirwa
2. Bakalaka
3. Bakgalagadi
4. Bakgatla-baga Kgafela
5. Bakgatla-baga Mmanaana
6. Bakwena
7. Bamalete
8. Bangwaketse
9. Bangwato
10. Barolong
11. Basarwa
12. Basubiya
13. Batawana
14. Batlokwa
15. Batswapong
16. Bayeyi
17. Hambukushu
18. Ovambanderu
19. OvaHerero (19) plus 4 of the Basarwa regional groups = 23

Basarwa groups

1. Ju/hoan
2. Xani
3. Togaoxae (or-Kxau//ein or Kxcau/ein)
4. Dxana
5. Dcui
6. Naro///Ana:Naro,//Gana,/Gwi. Khute
7. Qgoon
8. Nama
9. Shua:/Xaise, Deti. Cara. Shua, Tsixa, Danisi
10. Tshwa: Tshwa, Kua, Tshauwau, Heitshware
11. Tchuan
12. Hua

13. Hai/om
14. !Xoo
15. "Kwi/ Xam, = Khomani, //xegwi and //Ng!e
16. Tshu

Total 35 (if all Basarwa are represented)

LIST 2

1. Ba-Afrikaans
2. Babirwa
3. Bagciriku
4. Bahurutshe
5. Bakaa
6. Bakalaka/Kalanga
7. Bakgalagadi
8. Bakgatla ba-ga-Kgafela
9. Bakgatla ba-ga-Mmanaana
10. Bakgopeng
11. Bakgwangadi
12. Bakhurutshe
13. Bakwena
14. Bamalete
15. Banabjwa
16. Bangologa
17. Bangwaketse
18. Bangwato
19. Banyayi
20. Bapedi
21. Barolong
22. Barotsi
23. BaSeleka
24. Basubiya
25. Batalaote
26. Batawana
27. Batlhware
28. Batlokwa
29. Batshweneng
30. Batswapong
31. Bayeyi/Wayeyi

32. BaXhosa
33. BaZezuru
34. Hambukushu
35. OvaHerero
36. OvaMbanderu (37) plus 4 regional Basarwa groups = 41

Basarwa Groups

1. Ju/hoan
2. Xani
3. Togaoxae (or=Kxau//ein or Kxcau/ein)
4. Dxana
5. Dcui
6. Naro/// Ana: Naro, // Gana, Gwi, Khute
7. Qgoon
8. Nama
9. Shua: /Xaise, Deti, Cara, Shua, Tsixa, Danisi
10. Tshwa: Tshwa, Kua, Tshauwau, Heitshware, Tsiretsire
11. Tshuan/Hau
12. Hai//om
13. !Xoo
14. !Kwi: /Xam, =Khomani, //Xegwi and //Ng!e
15. Tshu

Total 52 (if all Basarwa groups are represented)

APPENDIX E

See Figure B at page 151

APPENDIX F

(a) LIST OF THOSE WHO MADE WRITTEN SUBMISSIONS

1. Father Solomon Maphongo
2. Bakgatla-Ba-Ga-Mmanaana – Moshupa le Thamaga
3. T. Ookeditse
4. Mathangwane Residents
5. North-East District – Sub-Chiefs:
   - Masunga
   - Mapoka
   - Mosojane
   - Makaleng - Ramokate
   - Moroka
   - Tsamaya - Letsholathebe
   - Jackalas I
   - Tati Siding
   - Matsiloje
   - Tshesebe
6. Mothusi Ramando
7. Keith Keitopetse K. Diako
8. Christopher "Kakuyarukua" Kahuku and John Chilalu
9. G.C. Dijeng
10. M.K. Dingake
11. Mothusi S. Seretse
12. Kesitegile Gobotswang
13. Tendekani E. Malebeswa
14. Phenyo M. Mmereki
15. The Honourable J.L.T. Mothibamele
16. Modise H.D. Maphanyane
17. Kefentse A. Morapedi
18. G.Caesar Motlhasedi
19. Abrahama R. Kakuwa
20. Headmanship of the Bakgwatlheng of Lokgwabe
21. Collins Bailelwang
22. Phineas P. Makepe
23. Kamwi Nsefwe Kalungu
24. Matengu L. Masule
25. J. Chilalu
26. Dimpho Mothemele
27. Kgosi L. Thobega

28. P.M. Diswai
29. Ruth Ketlhapile Motsete
30. Themba Mguni
31. Mothusi Diteko
32. A.R. Gabaumakwe
33. Moroka Peter Tumaeletse
34. Daniel Shima Monageng
35. Senye J. Matale
36. M. Kenosi
37. Esmond Kauthemwa
38. Joyce Mosweu
39. M. Kandjou
40. The Honourable A. Masalila

41. **Group Submission by the following:**

    Mr M.P. Phumaphi, I.T. Pie, M. Manyothwane, P. Nyamambi
    Z. Makhwade, S. Thapelo, P.A. Kgalemang, W.B. Nfila,
    B. Sechele, D. Moloise

42. Kenneth E. Obeng
43. E.M.K. Mogomela
44. Carter Kainangura Hikuama
45. R. Mannathoko
46. Goratagaone Walebowa
47. Chief Chika L. Nsundano
48. Kgotla ya Chanoga – North West District
49. Prof. A.P.N. Thapisa
50. Bekhuhane (Basubia)
51. Kgosi Christopher M. Masunga
52. Isaac B.K. Lesetedi
53. Galetshajwe Mantshonyane
54. Luther Vendjonoka Ndjakakana - Mbanderu Management Committee
55. Boemedi jwa motse wa Bluetown - M. Mothili, S.B. Morapedi
56. Louis Tlotlang Motsholathebe
57. Kernick Kebotseope Ntsosa
58. Fathazia Mmani Lenyatso Mmani
59. SSTN

60. **Group and Individual Submissions by the following:**

K. Phatshwane, T. Mosweta, F. Mfakosi, G. Bhadzambi, B. Seleka D. Hulasha

61. The Honourable Pelonomi Venson
62. Mbiganyi Peter M. Motshewa
63. Pheto Mokgadi Pilane
64. S.G. Macheke
65. M. Nabalo
66. N.K. Tlhobogang
67. P. Mokgwathi
68. Kgosi L.K. Leipego
69. Ketumile Kidoh Kaboeamodimo
70. M.R. Molomo
71. F. Wackers
72. Lawrence T. Moapare
73. Mothusi N. Marumoabi-Marumoatsile
74. Amos M. Moncho
75. Galesiti R. Baruti
76. T.H.S. Makgekgenene

77. **Group Submission by the following:**

B.M.S. Letsididi, E.B. Makgoeng, E.P.S. Letsididi, M.P. Sekgoma M.M. Mothoagae. M.O. Raditladi, G.C. Dijeng, M.M. Seema, D.K. Ontumetse, K.K. Motshidisi, B.M. Setshogo, R. Kore M. Mantaga, K. Serefentse, B.F. Letamo, P. Tlhaodi ,D. Mosimane O. Mpe, R.R. Ntebele, K. Gabonewe

78. Molefi S. Mogapi
79. Kebue Nata
80. Keabetswe Tshemedi

81. **Group Submission by the following:**

Gobe Matenge, Samuel Akuna Mpuchane, Edwin Tjakabaka Matenge, Christopher M. Dambe, Charles Mbiganyi Tibone, Christine Nleya, Ignatius Ndzinge, Batshani Ndaba, Anderson Chebane, Richard Tabulawa, Innocent Modisaotsile, Batisani Maswibilili,

Gabriel Komboni, Raphael Sikwane, Temba Mgadla, Changu Mannathoko, Bontshetse Mazile

82. The Botswana Congress Party
83. M.P.K. Nwako
84. M.M. Seema
85. Kamanakao Association
86. Keteng O. Gabanakgosi
87. Mpho G. Molomo
88. Andrew Villander
89. Q.K.J. Masire
90. Roberta Rivers
91. T.K. Molefi
92. Enoch K. Senyatso
93. I.H.S. Mothopeng
94. Kgosi David Seetelo II Toto
95. Botswana Peoples' Party
96. Sechele Temogo
97. Moitoi H. Baatweng
98. K. Phuthego
99. Dickson – Madame/Monatota
100. Samson Mmola
101. Bahentse Kgobero
102. Knowledge States Basupi Tolani Rona
103. Nelson G. Ntoko
104. Lesedi Seabelo Tsheshekane
105. Messers Brownie Ditshwane and Moffat Mwezi
106. Obonetse K. Menyatso
107. Lydia Nyati – Ramahobo
108. Masilo S. Motswiri
109. Moesi Setidiso
110. Tapson B. Jackalas
111. Robert N. Muzila
112. G.K. Kehuparetse
113. Motsamai K. Mpho
114. Makunda Molathiwa
115. Methaetsile Leepile
116. Sonny Manyeula

118. **Group Submission by the following:**

Keetla M. Masogo, Nobantu M.L. Rasebotsa, Moutlakgola Nwako, Tiroentle J. Pheto, Abram S.S.R. Kesupile, Bishy Mmusi, Tamasiga Mphoeng, Twoba B. Koontse, Galetlwaelwe Makgoeng, Edwin P.S. Letsididi, Nonofo E. Molefhi, Alfred Tsheboeng, Moatshe Joseph Moatshe, Boitumelo V. Kgarebe, Pelotelele Tlhaodi, Olebile Gaborone, Bolelang C. Pheko, Alinah K. Segobye, Thuso C. Dikgaka, B.M. Setshogo, Leepile Metlhaetsile, C. Moshe Lekaukau, Phillip Monowe, Molomo G. Mpho, Meshack Lefiri Mokone, Rodgers Keteng K. Molefi, Mmualefhe Gakofhile Raditladi, Meshack Boykie Mokgwathi, B.M.S. Letsididi, Legaenyana Matlhabaphiri

119. Ditshebo Samakabadi
120. Moiteelasilo D. Lecha
121. A.K. Lesetedi

122. **Group Submission by the following:**

Prof. Mautle, B.B. Moapare, O. Motumise, B. Moeletsi

123. Thari G. Pheko
124. Kebatlamang P. Morake

125. **Group Submission by the following:**

Samuel Ritjevera Tjezuva, Belpert S. Kauraisa, Jaanda J. Meroro, Heskia V. Rijarua, Unomuinjo B. Oaitse, Christophinah Kavezeri, Jacob Tjezuva, Tjiritja O.M. Kandjii, Michael Kanaimba, Hans Paenene Kavezeri, Emily U. Merero, Emelia P. Mereti, Godknows S. Wateka, annah Kangunde, Katjirua K. Kangunde, Otilia Tjituka, Otilia Kaatenye, Uripi Tjitamonisa, Kavenajova Tjitamonisa, Ukarapo Tjitamonisa, Amelia Mbaha, Amelia Tjipahura, Isaac Toromba, Kotite N. Kapara, Uamndjua Tjituka, Hangero Kapeko.

126. **Submission by the following:**

Kodaani Gazangeni, Montshiwa Montshiwa

127. Badziyili Baathuli Nfila

128. Matengu L.Masule
129. Samuel Kgatiswe
130. Bishop Ananas Kazondonge
131. Lloyd G. Mothusi
132. M. Segopolo
133. Oduetse Bailelwang
134. Jackson Dema
135. Moruti J. Hangero
136. Galegake N. Poroga

Submission by the following

Boipuso T.K. Lekwape, Mbakiso Phillimon

137. Edwin Ithibelwang Ntau

138. **Group Submission by the following:**

Henry Toto, Godfrey Ntau, Erens Kotokwe, Ernerst Rakolele, John Toto, Alberlt Rakolele, Gedion Gotiop, Masego Toto

139. Robert Ntshekang Moletle
140. Bafenyang Ngaka
141. Batlang G. Mmualefe
142. Benjamin Kalabeng Phethu Segwape – BNF Kgalagadi
143. Caesar Gabriel Motlhasedi
144. Kobe Seiphetlheng Seleka
145. Charles Ralekgobo Peter
146. Daniel M. Taolo
147. Seipato T. Seitsang
148. Segaetsho Garekwe

149. **Group Submission by the following:**

Elmon M. Tafa, Tebogo Seretse, Omponye Kereteletswe, Tjangu Gulubane, Cassius Biki Mmopelwa, Reason Moraedi Lekutlane, Mpho A. Thusa, Moss Misiamisi Mokgolele, Thabo D. Mapitse, Botsile Ratsipe, Odirile Caistus Selolwane, Tshireletso Motlogelwa, Temba Cyprian Sibanda, Castro Semmee, Ruth Baloyi, Boineelo

Shubane, Monei Gobotswang, Dipho Irene Setlhako, Dimakatso Michelle Polokelo, Peter Selato, Gape Kaboyakgosi, Nonofo Chief Modikwa, Tebagano Ntshole, Placid Galebidiwe Lombhala, Mpho Thabo Tau

150. Makunda Molathiwa

151. **Submission by the following**:

Otsile Osimilwe Ditsheko, Bishop Norman Muzonda

152. Dr M. Molomo

(b) **LIST OF THOSE WHO MADE ORAL SUBMISSIONS**

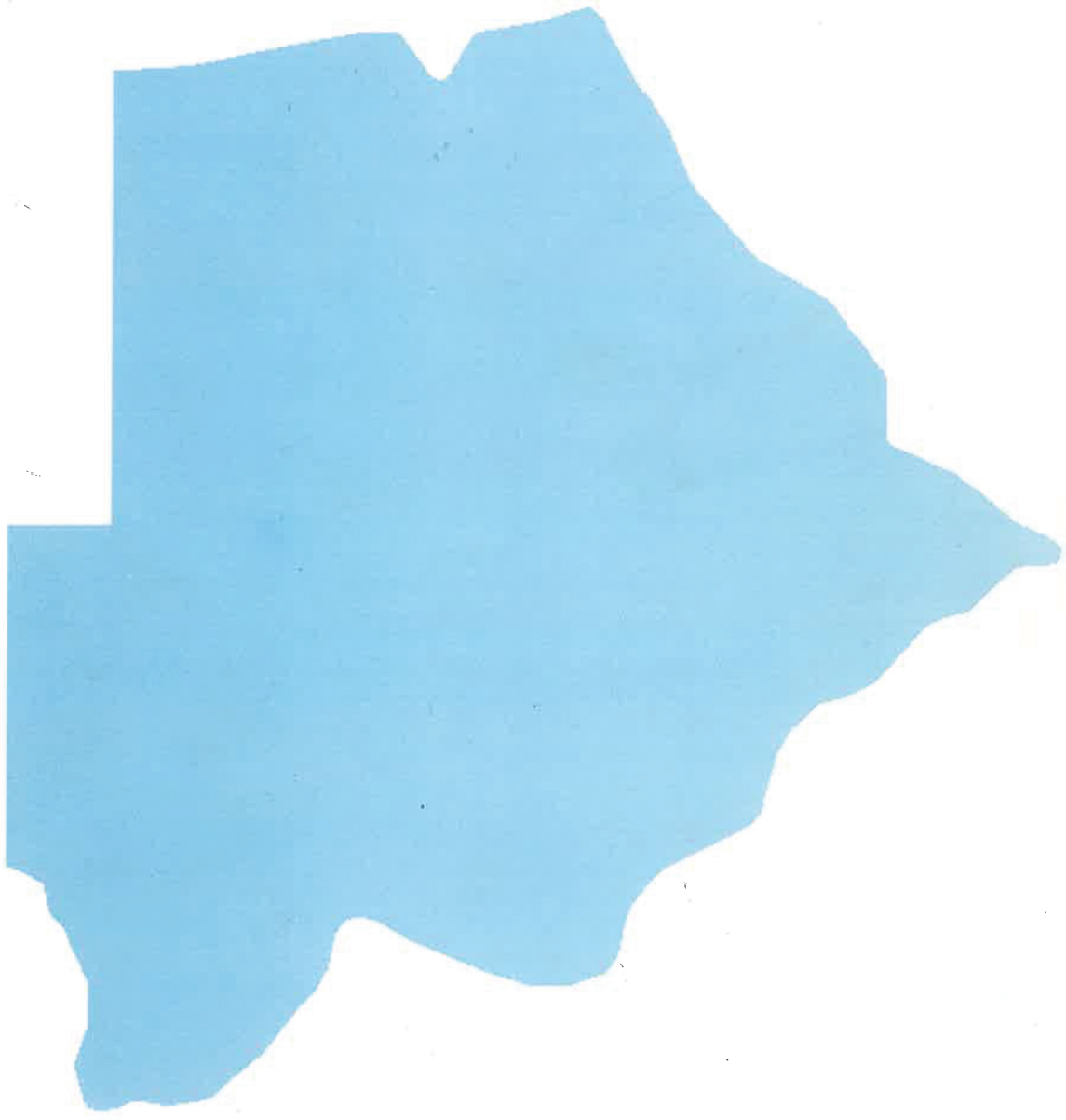
LIST OF ORAL SUBMISSIONS

1. Mr. S. H. Mothopeng
2. Ms. G. Petersen
3. Mr. E. T. Matenge & Group
4. Mr. E. K. Senyatso
5. Mr. R. Molefe
6. Botswana Peoples Party represented by Messrs: Mogome, Mogatle and Ms T. M. Mathumo.
7. Messrs M.P.K. Nwako and M. M. Seema
8. Mr. A. M. Mogwe
9. Mr. Gabanakgosi
10. Sir Ketumile Masire
11. Messrs: H. Seidisa and G. Kapolelo on behalf of Kamanakao Association
12. Botswana Congress Party represented by Messrs O. Koosaletse and P. Sethantsho
13. Mr. L. Tlhomelang
14. Mr. K. Setlhong represented Batswapong Youth
15. Mr. G. Gontse
16. Ms. G. Waleboa
17. Mr. K. Segarane
18. Lentswe la Batswapong represented by P. Kgoadi
19. Mr. B. M.S. Letsididi and Group.
20. Mr. M. K. Mpho

21. Members of the House of Chiefs
22. Mr. C. Kikuama represented Banderu Youth Association of Botswana
23. Mr. P. Phumaphi
24. Mr. T. Mguni
25. Mr. R. Maposa
26. Mr. B. Moilwa
27. Mr. V. Mamela
29. Mr. C. M. Barekilwe
30. Mr. K. N. Maoto
31. Mr. G. K. Basupile
32. Mr. R. Mannathoko
33. Botswana National Youth Council
34. Mr. C. M. Lekaukau and Group
35. Mr. F. K. Koloi
36. Mr. E. G. Sethebe
37. Mr. S. T. Seitsang
38. Mr. J. M. Letsatle

APOLOGY

We apologise to those who we may have inadvertently omitted from this list.



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